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ABSTRACT

This report identifies and analyzes sex-based references in the United States Code, which forms the basis of Federal laws which allow implicit or explicit sex-based discrimination. The U.S. Commission on Civil Rights has issued this report to inform the public and to provide resource materials for private citizens, the President, and members of Congress who want to identify and eliminate sex-discriminatory provisions in the Code. The report is divided into two major parts: (1) Selected Areas of Sex Bias; and (2) Title-By-Title Review. An Introduction, and a section of Findings and Recommendations are also included. (Author/JL)

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SEX BIAS IN THE U.S. CODE

A REPORT OF THE UNITED STATES COMMISSION ON CIVIL RIGHTS
April 1977

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
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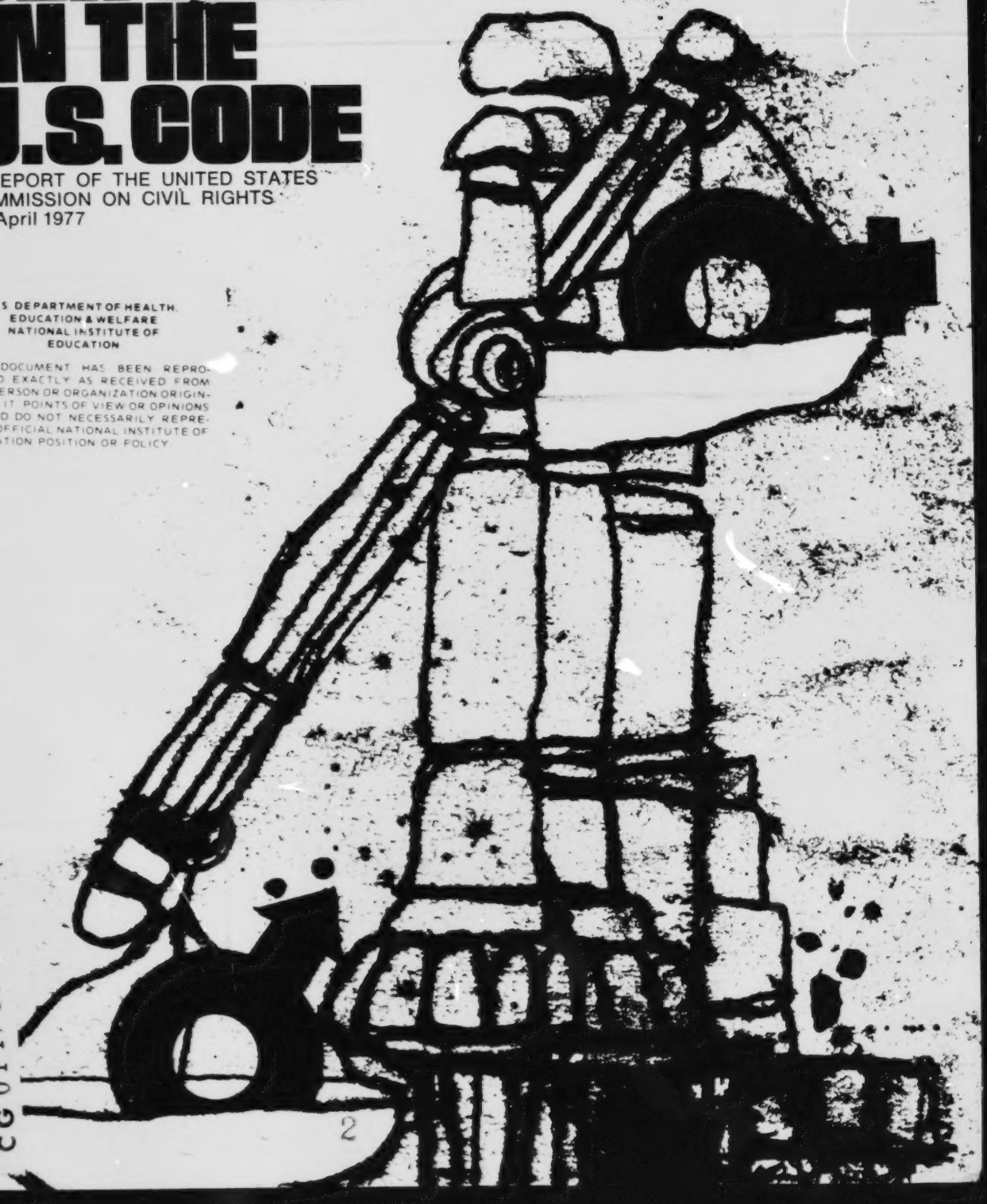

U.S. COMMISSION ON CIVIL RIGHTS

The United States Commission on Civil Rights is a temporary, independent, bipartisan agency established by the Congress in 1957 to:

- Investigate complaints alleging denial of the right to vote by reason of race, color, religion, sex, or national origin, or by reason of fraudulent practices;
- Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice;
- Appraise Federal laws and policies with respect to the denial of equal protection of the laws because of race, color, religion, sex, or national origin, or in the administration of justice;
- Serve as a national clearinghouse for information concerning denials of equal protection of the laws because of race, color, religion, sex, or national origin; and
- Submit reports, findings, and recommendations to the President and Congress.

MEMBERS OF THE COMMISSION

Arthur S. Flemming, Chairman
Stephen Horn, Vice Chairman
Frankie M. Freeman
Manuel Ruiz, Jr.
Murray Saltzman

John A. Buggs, Staff Director

LETTER OF TRANSMITTAL

U.S. COMMISSION ON CIVIL RIGHTS
WASHINGTON, D.C.
APRIL 1977

THE PRESIDENT
THE PRESIDENT OF THE SENATE
THE SPEAKER OF THE HOUSE OF REPRESENTATIVES

Sirs:

The U.S. Commission on Civil Rights presents this report to you pursuant to Public Law 85-315, as amended.

This report is an assessment of the status of women under Federal law. It surveys the United States Code identifying sex-based references. The report briefly discusses possible solutions and advocates action on the part of Congress and the President in ending the bias which remains in the law.

As some members of Congress are probably aware, the initial research and draft of this report was developed by contractors, Ruth Bader Ginsberg and Brenda Feigen Fasteau, assisted by a group of Columbia Law School students. That original product, utilized by several committees of the International Women's Year (IWY) project, led to strong recommendations that a comprehensive study of our laws--statutory and regulatory--be completed and a strategy developed to end sex bias in our laws. Former President Ford, in response to IWY, directed the Department of Justice to undertake such a study. The Justice Department study is underway and should not suffer from some of the limitations of this study that we are transmitting to you. Our study is not comprehensive, but it is a guide to you and to the Justice Department for action in erasing sex-based references and sex bias from our most basic laws. This study is current through December 1977.

The report is extensive, but not exhaustive. It is anticipated that the Department of Justice will utilize its resources to elaborate on what the Commission's report surveys. Much of the substantive material is included in Parts I and III. Part II is devoted to a Title-by-Title analysis. The discussion is deliberately brief--the value of Part II is to report or identify the sex-based references in each Title of the United States Code within the limitations set out earlier in the report. Part III,

"Findings and Recommendations," summarizes positions stated earlier in Parts I and II. Part III urges Presidential and congressional action, with strongest emphasis on congressional action.

We urge your consideration of the facts presented and ask for your leadership in ensuring implementation of the recommendations made.

Respectfully,

Arthur S. Flemming, Chairman
Stephen Horn, Vice Chairman
Frankie M. Freeman
Manuel Ruiz, Jr.
Murray Saltzman

John A. Buggs, Staff Director

ACKNOWLEDGMENTS

A report prepared under contract no. CR3AK010 by Brenda Feigen-Fasteau, Ruth Bader Ginsburg, and 15 students from the Columbia Law School, New York City was used as the basis for the Commission study. Ms. Ginsburg is professor of law at the Columbia Law School and Ms. Feigen-Fasteau, former director of the American Civil Liberties Union's Women's Rights Project, is a practicing attorney in New York City. The Commission is indebted to them for their work and the work of the Columbia Law School students.

The Commission is also indebted to staff members Shirley Bergert, Claudia Booker, Gladys T. de Chaves, Lucy Edwards, and Gail Gerebenics, and to interns Roger Burke, Catherine Crockett, and Joan Gilmore, students from the Antioch School of Law, Washington, D.C.

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All the writers are particularly indebted to Laura Chin for her editorial assistance.

Final preparation of this report was the responsibility of Audree B. Holton and Bobby Wortman in the Publications Support Center, Office of Management.

The project was directed and completed under the overall supervision of Lucy Edwards, Assistant General Counsel, Lawrence B. Glick, Acting General Counsel, and Richard Baca, General Counsel.

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INTRODUCTION

Background

In 1972 the jurisdiction of the U.S. Commission on Civil Rights was expanded to include discrimination on the basis of sex. Under this mandate, the Commission issued in June 1974 a Guide to Federal Laws Prohibiting Sex Discrimination.[1] The guide was recently revised and now includes a discussion on Federal regulations and laws which prohibit sex discrimination.

This report identifies and analyzes sex-based references in the United States Code, which forms the basis of Federal law in this country; it therefore addresses Federal laws which allow implicit or explicit sex-based discrimination. The Commission has issued this report to inform the public and to provide resource materials for private citizens, the President, and members of Congress who want to identify and eliminate sex-discriminatory provisions in the Code.

Women and the Constitution

The Constitution, which provides the framework for the American legal system, was drafted using the generic term "man." While the United States Supreme Court, the ultimate interpreter of the Constitution, might have determined that "man" also means "woman" in terms of rights, duties, privileges, and obligations under the Constitution, the Court instead has chosen on numerous occasions to deny to women certain rights and privileges not denied to men. The lead case historically in this area is Bradwell v. Illinois, 83 U.S. 130 (1872), which held that women need not be allowed the opportunity to practice law through admission to the State bar, with the reasoning that admission to a State bar--assuming the State's requirements of age, character, and knowledge were met--was not a right or privilege of national citizenship guaranteed to the citizens of each State by the 14th amendment. The result of the Court's decision was to uphold the State's determination that women were not to be allowed to practice law.

One means women have utilized to challenge this kind of reasoning has been to develop the potential of the equal protection clause of the 14th amendment. The Supreme Court historically has examined problems of equal protection by conceptualizing and labelling the category of interest at

issue (race, economic status, nationality, sex) and then applying a standard of review to study and judge the legislation which is claimed to affect that category of people. State economic legislation that affects a category of people, for instance, need pass only a minimal standard: the legislation must be "rationally related" to a State policy. When the categories at issue are those of race, alienage, or national origin, then any legislation that isolates such a category is suspect (hence these categories are labelled "suspect classifications") and that legislation will be subject to "strict scrutiny," the highest judicial standard established.[2]

Many constitutional reformers contend that "sex" should be defined as a "suspect" classification. If this were to happen, then any legislation that treated women differently than men would have to meet the strict scrutiny test. The Supreme Court has so far been unwilling to establish sex as a suspect classification. As a result, sex discriminatory legislation need not withstand the strict scrutiny test when the effects of such legislation are evaluated by the Court.

Three recent cases involving legal rights based on the category of sex demonstrate the piecemeal manner with which the Supreme Court applies the equal protection clause and illustrate the need for more comprehensive protection. In

Kahn v. Shevin,[3] the Court upheld a Florida law that permitted a tax deduction to widows but denied it to widowers. In Geduldig v. Aiello,[4] the Court decided that a California statute excluding pregnant women from a disability benefit program which covered nearly all other forms of disability was constitutionally valid. In a third decision, Schlesinger v. Ballard,[5] the Court upheld a Navy regulation that provided for mandatory discharge of male Navy officers who had served 9 years without promotion but discharged female officers after 13 years.

Although the Court permitted differential treatment on the basis of sex in these three areas, the Court has recently held (Reed v. Reed[6]) that arbitrary legislative choices based on sex, such as an Idaho statute that favors the male as executor in probate matters, are not constitutionally permissible. In Frontiero v. Richardson,[7] the Court expanded Reed by determining that sex-differential treatment of service personnel, which was premised on assumptions of dependency, violated the right to equal protection secured by the fifth amendment. A third case, Weinberger v. Weisenfield,[8] held invalid a social security statute that denied benefits to dependents of working women. The Court, noting the irrationality of discriminating between surviving parents, struck down the section that,

quoting Reed, "provided dissimilar treatment for men and women who are similarly situated."

Because American society has developed few constitutional protections against laws and official practices which treat men and women differently, sex discrimination occurs in such diverse areas as employment, criminal law and administration, tax and retirement benefits, military service, consumer credit, public education, family support laws, property rights, mortgage finance, and Federal social security.

The equal rights amendment (ERA) has been proposed as a measure to ensure constitutional protection against all legislative sex discrimination. The amendment states simply that:

§1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.

§2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

§3. This amendment shall take effect two years after the date of ratification.

The basic tenet of the ERA is that sex should not be a factor which affects the legal rights of women or men. A

report titled Equal Rights for Men and Women, issued by the Senate Judiciary Committee,[9] indicated that proponents of the ERA accept only two exceptions to this general principle. These exceptions occur for: (1) situations which relate to the individual's constitutional right to personal privacy; and (2) situations which relate to a unique physical characteristic of one sex.

The first step of the two-step process for any constitutional amendment--vote of approval by two-thirds of both Houses of Congress--was completed on March 22, 1972, when the Senate approved the proposed amendment. Ratification--the second stage--must occur within 7 years. As of December 1976, 34 of the necessary 38 States have ratified the proposed amendment. If this second step is completed by 1979, the ERA will become the 27th amendment to the Constitution, but it will not become effective until 2 years after ratification. The rationale behind the delay was to permit the States and the Federal Government an opportunity to amend or rescind laws that discriminate on the basis of sex. Some States have already begun this task.

Progress also has been made through legislative revision of statutory law. In 1963 Congress began altering the legal status of women in the country with respect to sex-based discrimination with the enactment of the Equal Pay

Act[10] and inclusion of a ban on sex and race discrimination in Title VII of the Civil Rights Act of 1964.[11] Since then, this country has witnessed the beginning of a national commitment to remove artificial barriers to women's development of their individual talents.

Nonetheless, the U.S. Code continues to define distinct spheres of action for men and women. In light of its previous commitment to equal opportunities for women and men, and the overwhelming majorities with which both Houses of Congress passed the ERA in 1971 and 1972, Congress clearly must assume leadership in amending the Code and enacting legislation to promote equal opportunity.

Martha Griffiths, a former member of Congress, has proposed that each standing committee of the House of Representatives, acting as a whole or by subcommittee, conduct a study of sex-based discrimination and possible remedies.[12] The Griffiths proposal, coupled with a similar resolution applicable to the Senate, and with provision for cooperation among committees working in the same or related areas, would be one appropriate method for accomplishing the elimination of sex-based differentials now explicit or implicit in the Code.

Congress, however, is not the only group responsible for statutory revision. Others who share this

responsibility include the President, Executive agencies, and Presidential Commissions. The President[13] has a unique tool in the Executive order, which carries with it the weight of law, and has been employed in the past by Presidents to promote equal opportunities for women and men. For example, Executive Order No. 11246, as amended,[14] prohibits Government contractors and subcontractors from discriminating in employment because of race, national origin, religion, or sex; it also requires contractors to develop an affirmative action program to eliminate discriminatory practices and to remedy effects of past discrimination.

Executive agencies, statutorily empowered by Congress to issue their own rules, regulations, and guidelines, can also effect change. Because their primary role is implementation and enforcement of Federal legislation, their guidelines, rules, and regulations frequently serve as deterrents or catalysts to the development of equal opportunity. For example, the U.S. Equal Employment Opportunity Commission has issued guidelines on the subject of sex discrimination and job testing.[15] Although these guidelines do not have the weight of law, they are heavily relied upon by the courts.[16] Some Federal agencies have instituted programs and set up bureaus which specifically

reflect the Federal Government's commitment to improve the economic and social conditions for women--for example, the Women's Bureau in the Department of Labor.

Presidential Commissions and Councils can promote issues such as equal rights. One such Commission currently in existence at the national level focuses on the rights of women: the National Commission on the Observance of International Women's Year was established by Executive Order No. 11832 to coordinate and implement this Nation's observance of International Women's Year. Its report to the President includes recommendations for improving the status of women and eliminating sex discrimination. In addition, the Citizens' Advisory Council on the Status of Women was created by the President in 1969 to evaluate both Federal and local programs pertaining to women and to make recommendations concerning gaps in legislation and negative practices.

Structure, Methodology, and Recommendations

In 1973 the U.S. Commission on Civil Rights decided to study the status of women under Federal law. After many months of study by contractors and Commission staff, this report has been developed as an extensive, but not exhaustive, study of the United States Code and certain sex-based references contained within it.

This report is divided into two major parts. In Part One, two substantive areas of the law--Title 10, Armed Forces, and Title 42, Social Security--are examined in terms of: (a) the present status of women under the law, (b) the effect of the present law on women, and (c) recent changes or proposed changes in that law to alter the status of women. A third area, Income Tax, was included in an earlier draft of this report, however, it was deleted from this final version since substantial changes in the law resulted from the passage of the Tax Reform Act of 1976. Sex bias remains in the substantive tax law as in other areas not covered by the discussion here.

Throughout this discussion of sex bias under the U.S. Code, reference will be made to the "equality principle"--a term which embodies the basic tenets of the ERA--equal rights and justice for women and men under the law.

The two areas selected are merely examples of substantive issues indicative of the status of women under Federal laws. These areas affect a large portion of the female population and are sufficiently comprehensive to provide insight into a system of laws which needs revision. An analysis of the treatment of women under Title 18 (criminal law), particularly in terms of the crimes of rape

and prostitution, would similarly reflect the status of women under law.

Part Two of the report is a detailed study of sex-based references and provisions in each Title of the Code. The basis for this survey was a computer printout furnished to the Commission by the U.S. Department of Justice, Justice Retrieval and Inquiry System (JURIS). To obtain the printout of more than 800 Code sections, the computer was programmed with 59 sex-based key words. These words in no way constitute the totality of sex-based terms in the Code, but they do define the limits of this study. Each Title will be identified by a descriptive phrase and the sex-based references, with their sections cited listed below. This will be followed by a discussion of the sex-based references and recommendations detailing necessary or desirable revisions. The following is a list of the key words employed:

SINGULAR	PLURAL
man, man's	
woman, woman's	women, women's
female	females
male	males
wife, wife's	wives
husband, husband's	husbands
boy	boys
girl	girls
masculine	

feminine	
father, father's	fathers
mother, mother's	mothers
widow, widow's	widows
widower, widower's	widowers
widowhood	
widowerhood	
sex	sexes
mankind	
daughter	daughters
son	sons
widowed	
daughter-in-law	daughters-in-law
son-in-law	sons-in-law
brother	brothers
sister	sisters
crewman	crewmen
midshipman	midshipmen
serviceman, serviceman's	servicemen, servicemen's
seaman	seamen
cadet	cadets
master	
sexual	
sexually	
businessman	businessmen
chairman	chairmen
spouse	
servicewoman	servicewomen
brother-in-law	brothers-in-law
sister-in-law	sisters-in-law
mother-in-law	mothers-in-law
father-in-law	fathers-in-law
pregnancy	
maternal	
maternity	
rape	
prostitute	prostitutes
prostitution	

Two major limitations in methodology affect the comprehensiveness of the second part of this report. First, only words included in the JURIS dictionary--from which the sample was drawn--were used. Deficiencies later discovered

in the word list include the absence of pronouns: he, she, her, him, hers, and his. Many words are missing, including man, men, woman, and women as the prefix or suffix of many common words; in addition, the words "grandfather" and "grandmother" were not included. The second major limitation is that many statutes contain implicit sex discrimination not necessarily revealed by this word-scanning method.

The 59 words used for this study revealed 800 sections of the Code which contained either substantive sex-based differentials or terminology inconsistent with a national commitment to equal rights, responsibilities, and opportunities (the equal rights principle.) The only exception occurred in sections which specifically prohibit sex discrimination rather than differentiate between females and males.

The 800 Code sections were reviewed in conjunction with relevant legislative history, case law, and commentary. The statutes were divided into three categories: sections that contain unnecessary sex-based references (e.g., "father" or "mother" when "parent" would suffice); sections that contain differentials neutralized by a preceding or subsequent definitional section; and sections that embody substantive differentials.

The Commission's recommendations reflect the fact that the use of masculine pronouns and other referents in the Code reinforces the traditional view of women as members of the "other" sex. The Commission believes that sex-based terminology should be permitted in the Code in only three situations: (1) When no suitable sex-neutral term exists (aunt, uncle, nephew, niece); (2) when the reference is to a physical characteristic unique to some or all members of one sex (for instance, programs whose purpose is to improve prenatal and post partum care);[17] and (3) when a sex-based reference is required by the constitutional right to privacy (female customs officials perform body searches of women entering the country).[18]

With these narrow restrictions the Commission's recommendations for the sex-neutralization of language within the Code can be accomplished through consistent, sex-neutral drafting of each section, using sex-neutral terminology. Most recommendations which appear in Part Two deal with neutralizing terminology, although there are policy considerations involved in some of these changes. The Commission has not pointed out each case where such policy considerations exist. However, the final responsibility for such consideration rests with the

Congress. The following is a list of specific recommended word changes:

SEX-SPECIFIC LANGUAGE	SEX-NEUTRAL LANGUAGE
serviceman, servicemen	services, service member, servicemembers
crewman	crew member
midshipman	cadet, midshipperson
enlisted man	enlisted personnel, enlisted member, enlistee
laboring men and women	workers, laborers
seamen	sailor, crew member
longshoremen	stevedores
chairman	chairperson, moderator, the chair, coordinator
postmaster	postoffice director, postal director
plainclothesman	plainclothesperson, officer, investigator
lineman	line installer, line repairer, line maintainer, line service attendent
newsboy	newscarrier, newspaper vendor
she, her (reference to ship)	it, its
"to man" a vessel	to staff
duties of seamanship	nautical or seafaring duties
lifeboat man	lifeboat person or operator
businessman	business person, executive, member of the business community, business manager
"husband" of the vessel	manager
master	captain, commanding officer
entryman	entry person, enterer
workman's compensation	workers' compensation
salesman	salesperson, sales personnel, sales representative, sales agent, sales clerk
watchman	guard, watchperson, watcher, the watch patroller
Relationship Models	
widow or widower	surviving spouse
wife, wives/husband, husband's	spouse, spouses, spouse's

brother/sister	sibling/siblings
daughter/son	child/children
mother/father	parent
husband and wife	married couple
father/mother	either parent
grandfather/grandmother	grandparents
stepbrother/stepsister	stepsibling
paternity	parentage
mother's insurance benefits	child-in-care benefits
maternal welfare	parental welfare

Gender Models

man, living man	person, human, human being, living human
mankind	humanity, human beings, humankind
per man	per person
prudent man	prudent individual, person
female/male	person, individual
manpower	human resources
manmade	artificial, of human origin, synthetic
trained manpower	trained work force

NOTES TO INTRODUCTION

1. The Commission also held an extended hearing on issues affecting women and poverty; the findings from this hearing will provide the foundation for legislative and other recommendations to be issued in the future. In addition, the entire spring 1974 issue of the Commission's Civil Rights Digest was devoted to women's issues. The Commission subsequently issued a number of clearinghouse publications in addition to the Guide. These include Mortgage Money: Who Gets It; Minorities and Women as Government Contractors; Women and Poverty; and Constitutional Aspects of the Right to Limit Childbearing. The Commission currently is preparing a study of the problems associated with rape. Reports on women have also been issued by several State Advisory Committees.

2. But see the discussion in Washington v. Davis, 426 U.S. 229 (1976), especially footnote 11 and its accompanying discussion.

3. 416 U.S. 351 (1974).

4. 417 U.S. 484 (1974). More recently, on Dec. 7, 1976, the Supreme Court also refused to invalidate under Title VII (1964 Civil Rights Act as amended) an employer's health disability plan which excluded disabilities arising from pregnancy. The Court reaffirmed Geduldig. General Electric Co. v. Gilbert, 45 U.S.L.W. 4031 (Dec. 7, 1976).

5. 419 U.S. 498 (1975).

6. 404 U.S. 71 (1971). Shortly before the printing of this report, the Supreme Court, in a 7-2 decision, held in Craig v. Boren, 45 U.S.L.W. 4057 (Dec. 21, 1976), that an Oklahoma law that required men to be 21 before they could buy 3.2 percent beer, but allowed women to buy it at age 18, is unconstitutional. In the majority opinion, Justice Brennan wrote: "to withstand constitutional challenge...classifications by gender must serve important governmental objectives and must be substantially related to achievement of those objectives."

7. 411 U.S. 677 (1973).

8. 420 U.S. 636 (1975).

9. S. Rep. No. 689, 92d Cong., 2d Sess. (1972).

10. 29 U.S.C. §206 (1970).

11. 42 U.S.C.§2000e, et seq. (1970).

12. H. Res. 108, 93d Cong., 1st Sess. (1973).

13. The President has recently asked the Department of Justice to conduct a special study examining sex discrimination in the U.S. Code and Federal regulations, a study much broader in scope than this present report.

14. 3 C.F.R. 169 (1974).

15. 29 C.F.R. 1607 (1974).

16. In the recent decision in General Electric v. Gilbert, 45 U.S.L.W. 4031 (Dec. 7, 1976), supra note 4, the Supreme Court held that part of EEOC's guidelines on sex discrimination which called for employers to provide health care benefits for disability arising from pregnancy to be invalid. It noted that these guidelines did not have the full force of law particularly where they were not based on the legislative history or intent, but were subsequently developed by EEOC.

17. 42 U.S.C. §§289(d), 701, 2674(b) (2) (1970).

18. 9 U.S.C. §1582 (1970). It should be noted, however, that this statute, as currently written, suggests that only womens' right to privacy need be protected. This is inconsistent with the equal rights principle.

PART ONE

SELECTED AREAS OF SEX BIAS

ARMED FORCES

Present Status of the Law

The Armed Forces have generally offered women separate and unequal opportunities. The exception to this generalization is the Coast Guard, which has moved toward full implementation of the equal rights principle. The primary reason offered by the Army, Air Force, Marines, and Navy for the absence of equal opportunity is that Congress has excluded women from the draft and combat duty.[1] This exclusion has been invoked to justify higher enlistment standards for women than men[2] and, until recently, to refuse women admission to the Military,[3] Naval,[4] and Air Force[5] Academies.

Sex-based differentials in the Armed Forces were presumed, if not approved, by the Supreme Court when Justice Douglas, writing for the majority, observed:

> Gender has never been rejected as an impermissible classification in all instances. Congress has not so far drafted women into the Armed Services.[6]

Furthermore, the Supreme Court, in Schlesinger v. Ballard, upheld the differential treatment of men and women for promotion and mandatory retirement purposes on the basis

of differential personnel requirements in the Navy necessitated by Title 10 §6015. To date, the Supreme Court has never ruled on the constitutionality of limiting the draft to one sex.

There are significantly different appointment, assignment, and nonenlisted promotion systems for male and female members of the Army, Navy, and Marine Corps, but differentials are not found within the Air Force.

For lower grades, "cut scores" are announced by respective service headquarters. Personnel with these scores or higher are promoted without regard to sex or race; personnel for higher grades are selected by boards. Members of the boards are not instructed to differentiate selections based on sex. By law, the Army, Navy, and Marine Corps have a separate appointment and promotion system for female officers; however, the proposed Defense Officer Personnel Management Act would integrate women in those services into the same promotion system with their male contemporaries. The army has integrated female officers into the temporary promotion system; integration for permanent promotion would require an amendment to the law. Because women are restricted from combat and combat-related assignments, and because such assignments usually accelerate an officer's

advancement, women have limited potential for selection to senior grades.[7]

Of all the uniformed services, only the Army has a distinct women's corps, the Women's Army Corps (WAC).[8] WAC officers are required to be appointed in the WAC.[9] Although they are permanently detailed to other branches of the Army, with the exception of armor, infantry, field artillery, and the air defense artillery, their permanent assignment in the WAC controls promotion opportunities and retirement status.[10] The Navy and Marine Corps have a provision applicable exclusively to the appointment of women to non-health-care commissions.[11] Other provisions reflect the separate and often unequal promotion system for female Navy and Marine Corps officers. For example, §5663 excludes certain women, reservists, or retired officers from promotion to nonline offices; §5664 states that women staff corps officers shall have women running mates in the line; and §5752 governs eligibility of female officers for submission to the selection board for promotion purposes.

The Air Force has not established separate appointment and promotion lines for men and women.[12] Prior to 1967 there was a 2 percent restrictive quota for female commissioned officers. At present, the Secretary of the Air Force is authorized to prescribe limitations on the number of female

officers.[13] In contrast to Armed Forces differentials in assignment and promotion areas, there are no differentials in the Air Force in the effective date of pay and the pay grades between male and female members, either enlisted or officers.[14]

Consistent with reserving combat assignment to men, combat-related military occupational specialties are also closed to women. Navy policy concerning assignment of enlisted women to job specialities is restricted by §6015. Indiscriminate job specialty assignments without the availability of sea duty training and experience would lead to a promotion and career impasse. An example of the special place carved out for women in services can be found in §6018, which provides that no naval officer, except Nurse Corps officers and women appointed under §5590 (all women officers other than health care personnel), shall be assigned to shore duty absent special reason.

Each branch of the Armed Forces provides for separate enlistment or appointment of women.[15] Furthermore, Executive Order No. 10240,[16] provides that a female officer or enlisted woman may be separated from the service by revocation of appointment, discharge, or otherwise, if she:

1. is determined to be the parent of a child;
2. has personal custody of a child;

3. is the stepparent of a child;

4. is pregnant; or

5. has given birth to a child.

The services have implemented a Department of Defense policy that separation for pregnancy or parenthood be on a voluntary basis only when training has been completed; women may be involuntarily discharged for pregnancy during training. In nontraining status, involuntary separation for pregnancy or parenthood for either men or women must be tied to nonperformance.

No regulation requires or permits separation of a male member who becomes a parent, gains custody of a child, or causes a pregnancy. The first three provisions treat women differently on the basis of cultural expectations, not biologically unique functions. When the regulation is applied to force women out of the service against their will, it discriminates against them. By permitting voluntary separation of women before the expiration of their agreed-upon term of service, the regulation discriminates against men who wish to leave the service to attend personally to child care. The fourth and fifth provisions describe a physical characteristic unique to women but one which bears no necessary relationship to their ability to perform in the military.

Sex-based differentials also pervade provisions relating to length-of-service computations and separation from service, i.e., voluntary and mandatory retirement, honorable discharge following specified periods in a grade without promotion, and discharge for unsatisfactory performance. Some of the differentials favor men; others appear to favor women but may actually take account of reduced opportunities for promotion and the higher eligibility requirements for women. Distinguishing provisions include §6386, which states that the President may suspend the operation of discharge and retirement sections for male Navy lieutenants appointed under §5590 but not for female Navy lieutenents, and §§6384 and 6395, which provide that in computing years of service for officers discharged because of unsatisfactory performance, the years of total commissioned service will be counted for males, while only the total active service years will be counted for females.

Central to sex-based discrimination in this area are the military academies. Although the statute authorizing appointments to the cadet corps has not confined appointments to males, the academies have refused in the past to admit women. Under §803(a) of the recently passed Public Law 94--106, the academies are required to admit

eligible female applicants to classes, beginning in the summer of 1976.

Women have been admitted to all academies since July 1976. Regulations have yet to be determined by the Department of Defense in response to such women-related issues as pregnancy occurring subsequent to a woman's admission to the Military, Naval, and Air Force Academies. (The Coast Guard is under the authority of the Department of Transportation.) As of mid-July 1976, these policies were the subject of considerable dispute, particularly as they may pertain to men as well as women. Each academy will also develop its internal regulations in response to the admission of women to cover diverse aspects of daily life such as hair length and handholding.

The military academies are prestigious educational institutions that provide unique training for career specialties and military leadership. These institutions now can serve as a model for the services by allowing equal opportunities for men and women.

Consequences of the Present Laws for Women and the Influence of the ERA

Debate over the equal rights amendment (ERA) makes it clear that proponents envisioned no exemption for the Armed

Forces from the principle of equal rights, responsibilities, and opportunity. Because the continuing exclusion of women from combat duty and their past exclusion from the military academies are at the center of any controversy concerning discrimination against women in the Armed Forces, it will be helpful to look at the two issues before examining in greater detail the effects of these policies at various stages of the military career.

As is indicated in the legislative history of the equal rights amendment, the principle of equal rights, responsibilities, and opportunity as applied to the Armed Forces calls for assignment of men and women on the basis of individual capacity in light of the needs of the services. The principle does not permit formulation of personnel utilization policy on the basis of sex. Instead, strictly job-related standards, including tests of strength and skill where relevant, would determine placement of personnel.[17]

Until the combat exclusion for women is eliminated, women who choose to pursue a career in the military will continue to be held back by restrictions unrelated to their individual abilities. Implementation of the equal rights principle requires a unitary system of appointment, assignment, promotion, discharge, and retirement, a system that cannot be founded on a combat exclusion for women. Use

of sex-neutral, strictly job-related criteria for military assignment determinations would assure that no women (and no men) would be forced into positions for which they were unqualified. On the other hand, eliminating sex, per se, as an assignment determinant, would make it possible for women to advance in the military as far as their talents and aspirations permit.

Because entrance to the academies enables a person to obtain the education necessary for officer status and advancement opportunities, the equal rights principle mandates equal access to the academies. Section 4342 now permits the admission of women to the academies as part of the law encompassed in P.L. 94--106.[18]

Comprehensive revision of Title 10 to eradicate gender-based differentials requires participation of experts knowledgeable in military affairs and sensitive to the requirements of the equal rights principle. Until recently, military and defense officials at the highest levels have been unwilling to assess the capabilities and potential of women on an individual basis. While conversion to an integrated appointment and promotion system is a challenging task, it is not impossible. Complex industrial seniority lines once segregated by race and/or sex already have been integrated. It may be that when the process is completed,

the greatest gain will be by the services because personnel will be utilized more effectively.

Transition to a system founded on the equal rights principle will require numerous adjustments. Women in the WAC (which would be dissolved) must be appointed or reappointed under a sex-neutral authorization without loss of time credit or accrued benefits. Those qualified for higher rank but held back because they had to await a vacancy in a "women's" line, should be afforded immediate opportunity for promotion.

To make up for past discrimination that confined women's service opportunities---ineligibility for admission to the academies, ineligibility for the sea duty essential for promotion to lieutenant commander rank---special skills training and educational programs should be offered. Current prerequisites and preferences for assignments and promotion should also be scrutinized for job-relatedness, validity, and fairness.

For many women currently in the service, affirmative action programs to remedy or reduce the impact of past discrimination may come too late. The continuing effects of past discrimination make a single set of promotion standards for men and women both inappropriate and unfair to those who were denied opportunities under prior law. Interim remedial

measures will be required so that these women are compensated for past inequities.

There are two specific areas in which women have been distinguished from men in the Armed Forces to the particular detriment of women. First, both male and female nurses serve in the medical corps. While the majority of nurses is still female (77 percent), a substantial minority is male. Provisions that refer to nurses and "other women" inappropriately sex-type a profession in which the rate of male participation is no longer minimal. Besides eliminating the suggestion that nurses are necessarily women, separate treatment and references to "women officers"[19] or members must be eradicated throughout Title 10. For example, §772(c) assumes that all Navy nurses are female and prohibits them from wearing uniforms without special authorization when not on active duty. There is no apparent reason for the special restriction on uniform wearing. The provision should be deleted if no adequate justification exists for the restriction. If it is retained, it should be sex-neutralized by the use of alternative pronouns.

The second area of particular discrimination against women concerns the bearing of and responsibility for

children. The consequences of these provisions vary greatly depending on the service member's sex.

These provisions are totally inconsistent with the neutrality required by the equal rights principle. All such provisions and accompanying legislation should be abolished.[20] If a provision relating to child custody is deemed necessary, it should be drafted in sex-neutral terms and should be based on actual responsibility for child care without regard to the sex of the custodian. For service separation purposes, disability due to pregnancy should be subject to the same treatment as that for any other temporary physical condition. Discharge regulations and the opportunity--or obligation--to retire, should be based not on sex but on performance or other legitimate needs of the service.

During the past few years, spurred by plans for all-volunteer Armed Forces, some action has been taken by Congress and the U.S. Department of Defense to expand service opportunities for women and to integrate male and female personnel. The 1967 amendments to Titles 10, 32, and 37 removed a few of the career impediments encountered by women officers.[21] However, differentials in pay and allowance provisions, currently tied to differentials in career and promotion opportunities, would not survive a

conscientious legislative effort to assure equal opportunity in the military.

Necessary Changes and Trends in the Law

In May 1974, P.L. 93--290 was enacted equalizing enlistment age requirements for men and women.[22] The proposed Defense Officer Personnel Management Act, now before the House Armed Services Committee, encompasses sex integration as part of a broad program to reform the officer structure for all services. The purpose of the proposed comprehensive reform is to foster more efficient use of personnel. The Central All-Volunteer Task Force has prepared a report for the Department of Defense on increasing utilization of women in anticipation of low volunteer levels for men. The Armed Forces have been directed to plan for substantially increased utilization of women in all service occupations.[23] To date, however, there has been more talk than action. Moreover, even the plans still on the drawing board fall short of promoting equal rights, responsibilities, and opportunity for women.

Because women currently in the service have not been permitted to develop and demonstrate their full potential, special attention must be paid to their situation in effecting the changes necessary to comply with the equal

rights principle. Appropriate transition regulations will be required to avoid adverse impact upon female members whose opportunities for training and promotion have been separate and unequal.

Because the impetus for changes in these laws derives primarily from the need for women to enjoy the same assignment, promotion, and tenure opportunities now available to men, amendments to the current laws must include:

1. Equal opportunities and requirements for enlistment, including enlistment for the reserve, the National Guard, the militia, and in relation to any draft call;

2. Discontinuation of separate womens' corps; and

3. Corps requiring specialized training, i.e., nursing or other specialties, should be staffed by integrated personnel and authorized by a unitary statute utilizing non-gender-based language.

Clearly a military career can offer a service person many opportunities to develop skills and training as well as advancement within a branch of the Armed Forces. It is also clear that these opportunities have been made more available to men than to women in the past through both explicit and implicit policies. It appears, however, that the Armed Forces--and Congress, which regulates the services--are

becoming more responsive to the needs, rights, and responsibilities of women who choose a military career.

SOCIAL SECURITY

Present Status of the Law

The Social Security Act, originally enacted in 1935, provides at the Federal level a system of basic income security for most retired and disabled workers, their dependents, and survivors of deceased workers as well as health insurance benefits to the long-term disabled and people age 65 and older.

Benefits received under the various social security cash benefits programs as a retired or disabled worker, or as a worker's dependent, or as the survivor of a deceased worker are based on the worker's earnings before retirement, disability, or death. Because benefits are based on past earnings and because women historically have earned considerably less on the average than men, there are significant differences in the amounts of benefits payable to women and men workers. For example, in June 1976 retired women workers were paid an average monthly benefit of $179, while retired male workers similarly situated received an average of $245.[24]

At the time the original Social Security Act was conceived and written, it was assumed that most families had

only one wage earner. Former Representative Martha Griffiths noted that:

> The income security programs of this nation were designed for a land of male and female stereotypes, a land where all men were breadwinners and all women were wives or widows; where men provided necessary income for their families but women did not; in other words, where all of the men supported all of the women....This view of the world never matched reality, but today it is further than ever from the truth.[25]

However close this characterization may have been to reality, by 1940, 14.7 percent of married women were in the labor force; the percentage increased to 38.3 by 1968.[26] By 1975, 44.6 percent of families with both husband and wife present also had two wage earners. In contrast to the situation assumed to exist prior to 1940, the typical family now has more than one wage earner.[27]

This increase in the number of women wage earners has combined with the continued concentration of women at the lower end of the pay scale to confound the effects of benefit provisions under the Social Security Act. The picture is further clouded by the increasing number of women who are classified as head-of-household, meaning that they assume the chief or sole financial responsibility for their families. According to 1975 statistics, of 54,773,000 families in the U.S., 13.2 percent are female-headed.[28]

Women who do not work outside the home are in a precarious position to receive social security benefits because they do not establish an independent entitlement. Their coverage depends, for instance, on the amount and extent of their husband's earnings and on whether the woman is aged or is caring for their minor or disabled children. An aged divorced wife of a retired, disabled, or deceased worker must have been married to that worker for 20 years continuously to receive social security benefits based on the ex-husband's earnings. A disabled widow with no minor or disabled children in her care cannot receive benefits until she reaches age 50---regardless of her ability to work.

Until the Supreme Court decision in Weinberger v. Weisenfeld,[29] a widower was not eligible for father's benefits on the deceased wife's earnings based on his having a child in his care. Weisenfeld held that the statute denying such protection to dependents of working women violated the due process clause by providing dissimilar treatment for men and women who were similarly situated. The Court reasoned that:

> ...the Constitution also forbids the gender-based differentiation that results in the efforts of women workers required to pay social security taxes producing less protection for their families than is produced by the efforts of men.[30]

The law continues to distinguish between women and men by requiring different eligibility standards for an aged husband or an aged or disabled widower seeking to qualify for benefits following his wife's death, retirement, or disability.

The Supreme Court has recently heard the different dependency requirement issue, granting certiorari in Mathews v. Goldfarb, 96 S. Ct. 1099, in October 1976. Although the wife's dependence on her husband is assumed in the law,[31] the husband must prove his dependence on his wife for at least half of his support to be eligible for these benefits.[32]

A third significant difference in social security treatment for men and women arose as a result of a different age limit for computing retirement benefits. The statute was amended in 1972[33] to make the computation age the same for both sexes (for those reaching age 62 after 1972) but the change was not made retroactive. Men and their dependents reaching age 62 before 1975 receive less than similarly situated women and men reaching age 62 after 1975. The difference, which results in women receiving greater benefits, was held not to be unconstitutional in Gruenwald v. Gardner,[34] where the plaintiff was a man who received $80.50 per month. A woman with the same work history would

have received $92.50 because of the difference in age computation. The Court reasoned that the purpose of the law was to reduce the disparity between the economic and physical capabilities of men and women and that the reasonable relationship between the statute and its objective justified the result.

Consequences of the Present Laws for Women

The current laws discriminate against women in three basic ways. First, benefits are made available to dependents of workers according to the worker's sex. This has resulted in discrimination because, while women contribute payments to social security on the same basis and in the same amount as men within a given salary range, fewer benefits are available to their dependents. This was the situation in Wiesenfeld. If the purpose of the social security program is to provide a basic income security to workers and their dependents, then it is not clear why dependents allowances should be determined according to the sex of their provider.

A corollary consequence for women is exemplified by Gruenwald, where certain women receive a larger benefit solely because of their sex. In either situation---more benefit or less benefit based solely on the sex of the

contributor---the result is discrimination on the basis of sex.

The second area in which the present laws discriminate against women is a situation in which a person could claim benefits both as a wage earner and as a dependent. The social security system is structured so that a person, either a man or a women, cannot get both a full benefit as a wage earner and a full benefit as a nonearning dependent. The dual entitlement aspects (as wage earner and as dependent) result in at least three discriminatory situations:

1. A two-wage-earner family may pay more social security taxes on their combined income than an individual would on the same income;

2. When the combined earnings of a couple are not significantly greater than the amount which generates the maximum benefit, the two-earner couple may be paid less in total retirement benefits than would a one-earner couple with the same income;

3. The lower earnings of one spouse (depending on which spouse earns more) generate either no additional benefits to the couple or significantly less benefits than would that same total income earned by an unmarried wage earner. While the spouse whose earnings are less may realize no return in benefit amount, that person does, nevertheless, have insurance protection for the spouse and children.

Central to the problems of dual entitlement is the concept of dependency. The inequities fall primarily on

women who, as noted in the Griffiths statement, were assumed to be financially dependent on their husbands at the time the social security laws were enacted. Unless a wage-earning wife is entitled to more than half of her husband's primary insurance amount (PIA) in her own right, or unless she becomes a beneficiary before he does, she will not receive any additional benefits as a result of her own social security earnings and contributions. A widowed wage-earner must have earned more than her husband to realize any additional benefit from her own social security work and warnings. Although more women are active in the labor force, significant numbers of women continue to realize no additional monetary benefits from their contributions.

The third major discriminatory consequence of present law results from averaging earnings to determine benefits amounts. Social security benefits are based on the worker's average earnings in a specified number of years. Because benefits are based on this average and not on recent earnings, inflation and typical salary increases throughout a career can combine to create a situation in which the average salary is significantly smaller than the preretirement salary. Although this problem exists for both men and women, the consequences for women are much greater, in part because of employment discrimination. In addition,

women often spend a period bearing and raising children, during which time they may earn nothing or very little. Women who work part time or part year will have low annual earnings.

A collateral problem is that this pattern of absences from the labor force seriously affects the woman's potential entitlement to disability benefits. To be insured for disability benefits, an individual disabled after age 31 must have worked 5 out of 10 years (20 of 40 quarters) preceding the onset of disability. It has been estimated that, as a result of the work pattern for many women, about 40 percent are eligible for disability benefits compared with 90 percent of men.[35]

Recently Proposed Changes

It seems clear from this brief survey of the present social security law and its consequences for married women, that problems arise primarily in two situations. The first occurs when the wife is a wage earner. The second situation is that in which a spouse assumes caretaking responsibilities in and for the home, work for which she or he receives no wages.

Non-wage-earners are vulnerable under social security provisions under which they receive benefits on the basis of

a spouse's earnings and not in their own right. To date, these provisions have affected non-wage-earning wives. The Social Security Administration now indirectly recognizes the value of work in the home in its statement that: "Application of a market cost approach placed the average 1972 value of a housewife at $4,705. The highest value---$6,417---was for women aged 23--24, reflecting the high proportion in this category who have children."[36]

While some persons have difficulty realizing that housework has an economic value, a far greater problem lies in assigning a monetary value to this work and crediting it for social security purposes. Free credits to a person who pays no actual dollars into the system appears to be unfair to the person who does pay. Payment of actual taxes on which to realize benefits would not be practical for poorer families who may need coverage the most.

Although the concept of noncontributory wage credits is not completely foreign to the social security system in the United States, the instances in which it has been utilized by the Federal Government are limited to the military (members of the Armed Forces receive credits for the value of certain prerequisites they receive)[37] and members of religious orders who have taken a vow of poverty and are not paid but receive credit for the value of board, lodging, and

clothing provided by their "employers"[38]; Social security contributions are paid by the religious orders. While there would be argument that the cost of homemaker credits would be high, the more serious defect of the credit concept is the inequity it would create for persons choosing to provide their own homemaking. Representative Bella Abzug sponsored two bills in the 93d Congress to provide social security wage credits for the non-wage-earning spouse.[39]

A second approach to the problem of establishing independent coverage for the homemaker, originally introduced by Representatives Barbara Jordan and Martha Griffiths, would provide for both individual social security coverage based on the combined earnings of both spouses,[40] and a tax credit to low-income families. This approach has the advantage of being fairer to the working person in terms of actual monetary contributions to the social security system and the benefits derived, but it does not provide any relief to the working person who also assumes homemaking responsibilities. The tax credits respond to the needs of the low-income homemaker by allowing her or him to participate in the system and by potentially reducing the tax liability of the family, a tax which, at present rates, is very regressive.[41]

A third and totally different approach, called the Fraser plan for its sponsor, Arvonne S. Fraser, former president of Women's Equity Action League, was presented at the Commission's hearings on women and poverty in June 1974.[42] According to this plan, social security benefits would be partly need-based and partly income-based, so that an individual would collect a basic minimum amount on retirement plus an additional amount based on her or his earnings record. There would be a provision ensuring that no one would receive less than that received under the current system. Only children would be classified as dependents. Adults would be classified as being: (1) Temporarily or permanently unable to contribute to the system; (2) physically, mentally, or economically disabled; or (3) retired because they are unable to work or care for themselves. The homemaker spouse would be fully eligible for benefits in her or his own right under this plan. A "constant attendent allowance" would be payable to people who care for others in a home but are not related by marriage, for example, single persons caring for aged parents or individuals caring for severely disabled relatives without compensation.

Several proposed changes in the social security laws are recommended:

1. Revise social security law to provide father's benefits in all cases where mother's benefits are provided under present law;

2. Eliminate the dependency requirement for husband's or widower's benefits;

3. Provide derivative social security benefits to divorced husbands;

4. Make the age 62 computation point applicable for men born prior to 1913;

5. Eliminate the 20-of-40 quarter work test required now to qualify for disability benefits;

6. Establish an occupational definition of disability for workers 55 years and older;

7. Make eligibility for benefits available to all disabled widows and disabled surviving divorced wives regardless of age, and make the benefits not subject to actuarial reduction;

8. Provide benefits to disabled spouses of beneficiaries;

9. Define dependents to include relatives who live in the home;

10. Reduce the duration of marriage requirement from 20 to 5 or 10 years for a divorced spouse to qualify for benefits on the basis of the wage-earner spouse's earnings record, and remove the requirement of consecutive years of marriage. In the alternative, a divorced wife's right to receive benefits should be based on the economic relationship between the parties and not the length of the marriage;

11. Allow additional dropout years to relate benefits more to current earnings;

12. Compute primary benefits and spouse's benefits to increase the primary benefits for workers by approximately one-eighth, and reduce the spouse's proportion from one-half to one-third, maintaining thereby the current total benefit of 15 percent for a couple while at the same time improving the protection for single workers, working couples, and surviving spouses; and

13. Amend the Social Security Act to eliminate separate references to men and women.

NOTES TO PART ONE

1. 10 U.S.C.§§6015, 8549 (1970). Note: All subsequent U.S. Code citations in this Armed Forces section (notes 1-23) are to Title 10.

2. §505 (1975). See also Historical Note to 1971 amendment. Since the services permit only a small number of the total personnel positions to be filled by women (partly due to combat), some services employ higher standards for women based on the large numbers of women applying for a relatively small number of available positions. The Air Force has enlisted women on the same standards as men since 1972. See Hearings on H.R. 3418 before Subcomm. No. 2 of the House Comm. on Armed Services, 93d Cong. 1st Sess., at 4-5 (1973). Age standards were equalized by Pub. L. No. 93-290. See also Historical Note on 1974 amendment to section 505 (1975).

3. §403.

4. §603.

5. §903.

6. Kahn v. Shevin, 416 U.S. 351 (1975), n. 10, at 356.

7. H. Minton Francis, Deputy Assistant Secretary of Defense, letter of response to John Buggs, Staff Director, U.S. Commission on Civil Rights, Sept. 9, 1976.

Two code sections, 5143 and 5206, provide for a women as an advisor to the Chief of Naval Personnel and the Commandant of the Marine Corps, while §3071 provides the Women's Army Corps with a director and deputy director.

8. §3071. The proposed Defense Officer Personnel Management Act would provide for the disestablishment of the WAC.

9. §§3283, 3211.

10. §3311.

11. §5590.

12. §8296.

13. §8208 (1975).

14. 37 U.S.C.A. §§202(k), 904 (1975); 37 U.S.C. §905 (1970).

15. For example, §§3296, 3383, 5583, 5590. For other examples, see Title 10 in Part Two of this report.

16. 3 C.F.R. (Comp. 1949-1953), p. 749, 16 Fed. Reg. 3689 (1951).

17. §6015 prohibits assignment of women in the Navy and Marines to duty in aircraft engaged in combat missions or on vessels other than hospital ships and transports; §8549 prohibits female members of the Air Force from duty in aircraft engaged in combat missions, excepting those designated under §8067---nurses, physicians, chaplains; and §§6911 and 8257 provide that aviation cadets in the Navy and Air Force shall be male.

18. §4342 used to guarantee 65 cadet positions to sons of service members who died in action and 100 cadet positions to sons of certain retired career officers. These now provide positions for "children" of service members.

19. For example, §§3311, 5590, 5752. See Title 10 in Part Two for greater detail.

20. For example, Executive Order No. 10240, supra at n. 16.

21. Pub. L. 90--130, 81 Stat. 374, 1967. This trend has accelerated with the passage of Pub. L. 94--106.

22. Pub. L. 93-290 §§1,2, 88 Stat. 173.

23. U.S., Department of Defense, Office of the Assistant Secretary of Defense, Manpower and Reserve Affairs, Utilization of Military Women, FY1973--1977 (December 1972).

24. Annual Statistical Supplement to Social Security Bulletin, "Table 67, Retired Workers by Sex" (1976).

25. Griffiths, Sex Discrimination in Income Security Programs, 49 Notre Dame Lawyer 534 (February 1974).

26. A Matter of Simple Justice, The Report of the President's Task Force on Women's Rights and Responsibilities (April 1970), at 11.

27. U.S., Department of Labor, Bureau of Labor Statistics, Special Labor Force Report, No. 183, "Marital and Family Characteristics" (March 1975).

28. Ibid.

29. Weinberger v. Wiesenfeld, 420 U.S. 636(1975), citing Reed v. Reed, 404 U.S. 71, 77 (1971).

30. Ibid. at 647.

31. 42 U.S.C. §402(b)(1970).

32. 42 U.S.C. §402(c), (f) (1970).

33. P.L. 92--603, 42 U.S.C. §402 (Supp. IV 1974).

34. 390 F.2d 591 (2d Cir. 1968), cert. denied, 393 U.S. 982 (1968).

35. Testimony of Robert M. Ball, former Commissioner of the Social Security Administration, Griffiths Hearings, at 316.

36. U.S., Department of Health, Education, and Welfare, Research and Statistics Note No. 9, "Economic Value of a Housewife" (DHEW Pub. No. (SSA) 75-11701).

37. 42 U.S.C. §401(1)(1970). All citations to the U.S.C. in this section are to Title 42.

38. §409(o)(Supp. III 1973).

39. H.R. 252, Jan. 3, 1973; H.R. 3217, Jan. 30, 1973, 93d Cong., 1st Sess. Neither was reported out of committee during that session; both are scheduled to be refined and reintroduced in the near future.

40. H.R. 12645, 93d Cong., 1st Sess., Feb. 6, 1974. This bill was reintroduced as H.R. 3009, Social Security Coverage for Homemakers, by Representatives Barbara Jordan and James Burke on Feb. 6, 1975, and is still pending before the Social Security Subcommittee of the Ways and Means Committee.

41. Jordan and Griffiths described their Feb. 6, 1974, bills as follows: "Under current law a worker with a wife and two children earning $5,000 in 1973 who does not itemize his deductions will owe $102 in Federal income tax and $300 in Social Security taxes. Under the two bills, should the worker's wife qualify as a homemaker and elect to pay on a 'deemed wage' of $4,500 per year, her social security tax liability would be $60 (homemaker social security tax of $360 minus $300 as a tax credit). In addition, the worker would be able to qualify for a tax credit of $300 of his wage at $5,000. The combined tax liability for the family would be $162 or $240 less than their previous liability, while both the husband and wife would be covered by social security."

42. A modified version of the Fraser plan was introduced in Congress (H.R. 14119) by Ms. Fraser's spouse, Representative Donald Fraser in 1976.

PART TWO

TITLE-BY-TITLE REVIEW

Title 1 -- Definitions

Sex-Based References:

1 U.S.C. §1

Discussion

1 U.S.C. §1, a definitional statute, states that in all Federal legislation, unless the context indicates otherwise, "words importing the masculine gender include the feminine as well"; both nouns and pronouns are covered by this stipulation. Although no substantive differential may be generated by 1 U.S.C. §1, the current drafting scheme suggests a society in which men are (and ought to be) the dominant participants. Revision of 1 U.S.C. §1 is recommended to reflect in form as well as substance the equal status of women and men before the law. A new subsection also is proposed, 1 U.S.C. §106(c), instructing drafters to use sex-neutral terminology in all Federal legislative texts.

Recommendations

1 U.S.C. §1 -- Replace "words importing the masculine gender include the feminine as well" with "words importing one gender include the other as well; legislation drafted after _____, 197_ will conform to 1 U.S.C. §106(c)."

1 U.S.C. §106(c) -- [A new section, to be added to Chapter 2, which is currently titled "Acts and Resolutions; Formalities of Enactment; Repeals; Sealing of Instruments." This Title might be amended to include the phrase "Sex-Neutral (or Non-Discriminatory) Terminology."]

Sex-Neutral (or Nondiscriminatory) Terminology to be Used in all Legislative Texts

After _____, 197_, all Federal statutes, regulations, and rules shall be written in language that is neutral in relation to sex. Such neutral language shall include, but shall not be limited to

1) human(s), human being(s), humanity, individual(s), member(s), people, person(s), personnel, worker(s), or their derivatives to replace sex specific words such as man (men) or woman (women) whether appearing alone, in compound words, or in phrases; for example:

humanity for mankind
human resources for manpower
service member(s) for serviceman(men) or servicewoman (women)
individual(s) or person(s) for men and women

2) -er(s) suffix to replace man (men) or woman (women) in compound words; for example:

enterer for entry(man) or entry(woman)

3) artificial in lieu of manmade

4) spouse to replace wife or husband

5) surviving spouse to replace widow or widower

6) decedent or deceased spouse to replace deceased wife or deceased husband

7) parent(s), parental, or parenthood to replace mother(s), father(s), maternal, maternity, paternal, paternity

8) sibling(s) to replace sister(s) and brother(s)

9) child(ren) to replace daughter(s), son(s), girl(s), boy(s)

10) the pronoun combination he/she, her/him, hers/his to replace third person singular pronoun(s)

11) plural constructions to avoid third person singular pronouns

Nothing in this section shall be construed to prohibit the use of sex-related words in those limited instances where no sex-neutral substitute exists, or the reference is to a physical characteristic unique to some or all members of one sex, or the constitutional right to privacy requires a sex-specific reference.

Title 2 -- The Congress

Sex-Based References:

2 U.S.C. §§6, 36a, 38a, 124, 125

Discussion

2 U.S.C. §6 reduces the number of Representatives where a State denies "males" the right to vote. It dates from the post-Civil War period and, consistent with the abortive seccnd section of the 14th amendment,[1] reflects an intent to assure the franchise to black men.

2 U.S.C. §§36a, 38a, 124, and 125 concern death benefits for the "widcw or widower" of a member of Congress.

Recommendations

If 2 U.S.C. §6 is retained, "males" should be replaced with "individuals."

2 U.S.C. §§36a, 38a, 124, and 125--Replace "widow or widower" with "surviving spouse."

Title 5 -- Government Organization and Employees

Sex-Based References:

5 U.S.C. §§2108, 3310, 3364, 5561, 5582, 5583, 7152, 8101, 8109, 8110, 8133, 8135, 8141, 8332, 8341, 8342, 8521, 8705[2]

Discussion

In 1972 Congress terminated the inconsistency between Federal employment policy, as indicated in Title 5, and the policy Congress mandated in 1964 for private employers under Title VII of the Civil Rights Act of that year.[3] In lieu of amending each particular section that provided to the spouse or family of a male employee benefits not available (or accorded on a limited basis) to the spouse or family of a female employee, Congress enacted a catch-all provision. 5 U.S.C. A. §7152(b) stipulates that all regulations granting benefits to government employees:

> shall provide the same benefits for a married female employee and her spouse and children as are provided for a married male employee and his spouse and children....

Further, 5 U.S.C.A. §7152(c) provides that

> any provision of law providing a benefit to a male Federal employee or to his spouse or family shall be deemed to provide the same benefit to a female Federal employee or to her spouse or family.

The section applies not only to other sections of Title 5, but also to "any other provision of law granting benefits

to employees."[4] The House report on the bill that became 5 U.S.C.A. §7152(c) emphasizes that other Titles are affected by the catch-all equalization provision.[5] However, the Senate report refers only to the impact of the provision on other sections of Title 5.[6]

Recommendations

5 U.S.C.A. §7152 appears to require complete equality of benefits for Federal employees regardless of sex. To eliminate any room for doubt and to avoid unnecessary gender references in Federal legislation, each section discriminatory on its face should be amended. The sections include:

5 U.S.C. §2108 -- Subsections 3(F) and (G) provide benefits to a mother of a veteran who lacks a husband capable of supporting her.

[It is doubtful that 5 U.S.C.A. §7152 sex-neutralizes this provision. Amendment should provide benefits for a parent of a veteran not supported by a spouse and incapable of self-support.]

5 U.S.C. §3364 -- Provides for promotion of substitute postal employees in the order in which they were originally appointed as long as they are "of the required sex."

[Here, too, it is doubtful that 5 U.S.C.A. §7152 effects the necessary change. The sex of the substitute employee is irrelevant.]

5 U.S.C. §5561 -- Deals with payments of missing employees and lists "wife" but not "husband" as an employee's "dependent."

Title 16 -- Conservation

Sex-Based References:

16 U.S.C. §§112, 117c, 192, 218, 410r-3, 433k, 410s, 410t, 410v, 410x, 754, 760a, 1131

Discussion

16 U.S.C. §§112, 117(c), and 1131 appear on the printout because they include the word "man" as a generic term indicating all members of the human race.

16 U.S.C. §§192, 410(s),(t),(v),(x) contain proper names that include a programmed word: Section 192 mentions "Twin Sisters," a mountain in the Rocky Mountain Nationsal Park; section 410(s),(t),(v), and (x) establish "Minute Man" National Historical Park.

Two provisions concerning conveyances of parkland, 16 U.S.C. §§218 and 410r-3, appear on the printout because they include the term "his wife." 16 U.S.C. §218 uses language of the Kentucky deed and quitclaim to which the provision refers. Section 410r-3 refers to a tract of land described in a masters deed "in the proceeding entitled 'The Connecticut Mutual Life Insurance Company against Toni Iori, a single man; Peter Iori and Helen Iori, his wife, d/b/a Iori Bros., et al....'"

16 U.S.C. §433k establishes Whitman Mission National Historic Site as a "public national memorial to Marcus Whitman and his wife, Narcissa Prentiss Whitman...."

An arguably substantive sex differential appears in 16 U.S.C. §754, authorizing the commutation of rations "not to exceed $1 per man per day" for officers and crews of vessels of the Fish and Wildlife Service. While the phrase is not necessarily discriminatory in effect, it reflects the fact that currently no women are employed in the Fish and Wildlife Service. 16 U.S.C. §743 provides that "officers and men" of the Coast Guard be detailed for such service. Heretofore, non-reserve status in the Coast Guard has been limited to men. Women could not qualify for the Fish and Wildlife Service. Thus, the reference in 16 U.S.C. §754 to "man" accurately describes what has been an occupational exclusion. (16 U.S.C. §743 does not appear on the printout because "men" was not included as a programmed word.)

16 U.S.C. §760a provides for a limitation on fishing take "per unit of time, per man, or per gear." Read literally, the section indicates either that all takers of fish are male or that women who fish should not be limited in their catch.

Recommendations

16 U.S.C. §§112, 117c, 1131 -- change "man" to "human beings" or "humans."

16 U.S.C. §§192, 410(s),(t), (v),(x) --the proper names to which reference is made in these sections should be left undisturbed.

16 U.S.C. §§218, 410r-3--no change is recommended if these sections simply repeat deed or court record descriptions.

16 U.S.C. §743--replace "officers and men" of the Coast Guard with "officers and enlisted members" or "personnel."

16 U.S.C. §§754, 760--replace "man" with "person" or "individual."

Title 17 -- Copyrights

Sex-Based Reference:

17 U.S.C. §24

Title 17, providing for copyright protection of the creative work product of individuals, discriminates only in terminology in the identified section.

Discussion

Section §24 concerns duration, renewal, and extension of copyrights by the author or others, if the author is dead. In identifying those entitled to renew or extend the copyright, the section uses the sex-specific terms "widow" and "widower."

Recommendation

17 U.S.C. §27--substitute "surviving spouse" for "widow," "widower," the first time mentioned; "spouse" the second time mentioned.

Title 18 -- Crimes

Sex-Based References:

18 U.S.C. §§113, 714, 1111, 1114, 1153, 1384, 1735, 1737, 1952, 2031, 2032, 2198, 2421, 2422, 2423, 2424, 3056, 3185, 3242, 3567, 3614, 4082, 4251, 4321

Several of the sections listed on the printout are not sex discriminatory in substance but do raise terminological questions. Principal substantive differentials inconsistent with the equal rights principle appear in sections penalizing prostitution and related offenses, seduction, statutory rape, and rape. To eradicate sex-based discrimination in the catalogue of crimes, all retained sections with gender distinctions should be recast in sex-neutral form.

With n recent years there has been a growing legal movement in this country advocating the decriminalization of prostitution, i.e., laws classifying or referring to prostitution or solicitation by or on behalf of a prostitute should be repealed. Sections referring to the Federal Reformatory for Women and the National Training Schools for Boys require modification as part of an encompassing program to eliminate unwarranted sex segregation in correctional institutions.

S.1400 (Criminal Code Reform Act of 1973) would sex-neutralize the substance of several Title 18 provisions.[34]

Discussion

18 U.S.C. §§1735 and 1737, in conjunction with certain Title 39 provisions, regulate the mailing of sexually-oriented advertisements. The "sex" involved in these sections is unrelated to gender-based discrimination.

18 U.S.C. §2198 penalizes seduction of a woman passenger on an American ship by any employee on board; 18 U.S.C. §3614 provides that the fine imposed for a violation of 18 U.S.C. §2198 may be awarded to the woman seduced or her child if any. The behavior penalized by 18 U.S.C. §2198 is seduction and illicit connection "under promise of marriage, or by threats, or the exercise of authority, or solicitation, or the making of gifts or presents." Subsequent marriage to the seducer is a defense and no conviction may be had on the uncorroborated testimony of the woman.[35]

Only one aspect of the crime defined in 18 U.S.C. §2198 might merit retention because it is not covered elsewhere: the prohibition against inducing intercourse by exercise of authority.[36] In general, apart from custodial situations, the problem most often occurs when the importuned person is

young. Statutes prohibiting corruption of a minor and sex offenses against a minor should suffice.

Rape

Under 18 U.S.C. §§1153 and 2032, it is a crime for a person to have carnal knowledge of a female not his wife who has not reached 16 years of age.[37] "Rape" is defined in 10 U.S.C. §920 in the traditional manner as: "Any person...who commits an act of sexual intercourse with a female not his wife, by force or without her consent, is guilty of rape." The "statutory rape" offense is defined in these sections in much the same way: the victim must be a female and the offender a male, with the current penalty of 15 years imprisonment for a first offense.

These provisions clearly fail to comply with the equal rights principle. They fail to recognize that women of all ages are not the only targets of sexual assault; men and boys can also be the victims of rape. In the case of statutory rape, the immaturity and vulunerability of young people of both sexes could be protected through appropriately drawn, sex-neutral proscriptions. The Model Penal Code and S. 1400 §1633 require a substantial age differential between the offender and victim, thus declaring criminal only those situations in which overbearing or coercion may play a part.

During the 93d Congress, a number of rape-related bills were introduced. These fell into two categories, those which provided for research and those which redefined Federal rape laws. The first category is exemplified by Section 303 of H.R. 14214, the Health Revenue Sharing and Health Services Act of 1974, vetoed by the President but subsequently passed, which would have established a National Center for the Control and Prevention of Rape in the National Institute of Mental Health to "conduct research into the legal, social and medical aspects of rape" and to disseminate information and provide training materials related to rape prevention and control. (See H.Rept. No. 93-1524, 93d Cong., 2d Sess. (1974)).

S.1, S.1400/H.R. 6046, and H.R. 10047, which would have provided for a major revision of Federal substantive and procedural criminal law, each contained provisions redefining the Federal offense of rape to conform with the equal rights principle.

Prostitution

Title 18 encompasses the crime of prostitution in several sections: 18 U.S.C. §1952(b) (forbidding the use of interstate commerce with intent to distribute the proceeds of any unlawful activity, includes prostitution as defined under State law or the law of the United States); 18 U.S.C.

§1384 (prohibiting prostitution and the related activities of solicitation, procuring, setting up a house of ill fame, or using vehicles or buildings for prostitution near a military base); and 18 U.S.C. §§2421-24 (the Mann Act, prohibiting travel and transportation of women in interstate or foreign commerce for prostitution, debauchery, or other immoral purposes). The Mann Act also calls for registration of information about a recently entered alien woman or girl engaged in the business of prostitution; the registrant is then shielded from use of the information in a criminal prosecution.

These prostitution proscriptions are subject to several constitutional and policy objections. Prostitution, as a consensual act between adults, is arguably within the zone of privacy protected by recent constitutional decisions. See Griswold v. Connecticut, 381 U.S. 479 (1965); Eisenstadt v. Baird, 405 U.S. 438 (1972); Roe v. Wade, 410 U.S. 113 (1973). But sex-neutralizing the statutory language is unlikely to effect significant substantive change, for enforcement concentrates on the female even when male prostitution is encompassed in the same category. With the exception of several communities where it is police policy to arrest the client also, it is realistic to expect that

vigorous enforcement will be directed against the person who patronizes a prostitute.[38]

The Mann Act suffers from additional problems. It prohibits the transportation of women and girls for prostitution, debauchery, or any other immoral purpose. This language, which is not confined to illegal acts but encompasses "immoral" conduct as well, appears too broad and vague to the point where fair notice of the activity proscribed is hardly supplied. Moreover, the proscription is not limited to situations in which there is a financial factor. Thus, the act poses the invasion of privacy issue in an acute form.

The Mann Act also is offensive because of the image of women it perpetuates. In the year it was passed, the alien prostitution importation act (penalizing the entry of any alien for the purpose of prostitution) was amended to include boys as well as girls. The Mann Act was directed to a different group; it was meant to protect from "the villainous interstate and international traffic in women and girls," "those women and girls who, if given a fair chance, would, in all human probability, have been good wives and mothers and useful citizens." H.R. Rep. No. 47, 61st Cong., 2d Sess. 9-11 (1909). As the courts consistently proclaimed, the act was meant to protect weak women from bad

men. See, e.g., Caminetti v. United States, 242 U.S. 470 (1917); Gebardi v. United States, 287 U.S. 112 (1932).

S. 1400 §1841, introduced during the 93d Congress, defined and limited prostitution-related conduct subject to criminal penalty, and concentrated on financially-motivated prostitution business. The bill defined prostitution as engaging in a sexual act (as defined in S. 1400 §1636(a)) as consideration for anything of pecuniary value and prostitution business as the derivation of profits from prostitution by a person who acts under the control or supervision of another person.

Although S. 1400 §1841, in contrast to the Mann Act which it would replace, is cast in sex-neutral form, retaining prostitution business as a crime in a criminal code is open to debate. Reliable studies indicate that prostitution is not a major factor in the spread of venereal disease,[39] and that prostitution plays a small and declining role in organized crime operations.[40]

18 U.S.C. §3056, providing Secret Service protection for the wife of a former President during his life and for the widow until her death or remarriage, should be extended to cover the spouse or surviving spouse of a woman President.[41]

A further unwarranted male reference appears in 18 U.S.C. §714, which regulates use of the "Johnny Horizon" antilitter symbol. According to the congressional reports, this tall, lean figure with sportsclothes, hiking boots, and a field jacket is "a representative of a rugged outdoorsman who loves our forests, deserts, mountains, lakes, streams and terrain."[42] This sex stereotype of the outdoorsperson and protector of the environment should be supplemented with a female figure promoting the same values. The two figures should be depicted as persons of equal strength of character, displaying equal familiarity and concern with the terrain of our country.

Two sections of Title 18 refer to sexually-segregated institutions: 18 U.S.C. §4082 (the National Training School for Boys), and 18 U.S.C. §4321 (Board of Advisers of the Federal Reformatory for Women). Sex-segregated adult or juvenile institutions are obviously separate, and in a variety of ways, unequal. Differences in training programs, distance from cities and relatives, work-release programs, educational opportunities, security, and other conditions redound to the benefit of men in some instances and women in others.[43] The feasibility of penal institutions housing both males and females has been studied by the LEAA and other special projects; their findings, so far, have been

favorable. If the grand design of such institutions is to prepare inmates for return to the community as persons equipped to benefit from and contribute to civil society, then perpetuation of single-sex institutions should be rejected.

The equal rights principle looks toward a world in which men and women function as full and equal partners, with artificial barriers removed and opportunity unaffected by a person's gender. Preparation for such a world requires elimination of sex separation in all public institutions where education and training occur. While the personal privacy principle permits maintenance of separate sleeping and bathing facilities, no other facilities, e.g., work, school, or cafeteria, should be maintained for one sex only.[44]

18 U.S.C. §4082, ordering the Attorney General to commit convicted offenders to "available, suitable, and appropriate" institutions, is not sex discriminatory on its face. It should not be applied, as it now is, to permit consideration of a person's gender as a factor making a particular institution appropriate or suitable for that person.

The Senate bill, S. 1400, contains several sections on the Board of Correction and the Parole Commission created by

that act. The provisions do not appear sex discriminatory on their face; implementing regulations should not deviate from this neutrality.

Recommendations

18 U.S.C. §3056--Change "wife" and "widow" to "spouse" and "surviving spouse."

18 U.S.C. §714--Amend the statute to provide for a female counterpart to Johnny Horizon; she should promote the same values as he does on an equal basis.

18 U.S.C. §1114--Replace "enlisted man" with "enlisted member" or "enlisted person."

18 U.S.C. §4082--Replace "brother or sister" with "sibling."

18 U.S.C. §§2198 and 3614 -- Eliminate these sections.

18 U.S.C. §2032 -- Eliminate the phrase "carnal knowledge of any female, not his wife who has not attained the age of sixteen years" and substitute a Federal, sex-neutral definition of the offense patterned after S. 1400 §1633: A person is guilty of an offense if he engages in a sexual act with another person, not his spouse, and (1) compels the other person to participate: (A) by force or (B) by threatening or placing the other person in fear that any person will imminently be subjected to death, serious bodily injury, or kidnapping; (2) has substantially impaired the other person's power to appraise or control the conduct by administering or employing a drug or intoxicant without the knowledge or against the will of such other person, or by other means; or (3) the other person is, in fact, less than 12 years old.

This report recommends alteration of pronoun usage throughout the Senate bill S. 1400 to conform with the proposed sex-neutral terminology format. S. 1400 retains use of the masculine pronoun to cover individuals of both sexes.

18 U.S.C. §1153 -- Eliminate the phrase "carnal knowledge of any female, not his wife" and substitute offense as set forth in S. 1400, §1633. a Federal, sex-neutral definition of the offense patterned after S. 1400 §1633.

A sex-neutral definition of rape, such as the one set forth in S. 1400 §1631 should be added to Title 18 or Title 10 and referred to throughout for the definition of the offense.

18 U.S.C. §§113, 1111, 2031, 3185, 3242, 4251, --These need no change if a sex-neutral definition of rape is adopted.

18 U.S.C. §1153 -- Change "female" to "person," and revise this section so that Native Americans are tried in Federal court under Federal law.

18 U.S.C. §4082 -- Change the name and eliminate the single sex character of the National Training School for Boys.

18 U.S.C. §4321 -- Change the name and eliminate the single sex character of the Federal Reformatory for Women as part of the larger reorganization of the Federal correctional system necessitated by the equal rights principle.

18 U.S.C. §§1384, 1952(b), 2421-2424 --Repeal these sections.

Title 19 -- Customs Duties

Sex-Based References:

19 U.S.C. §§165, 1401a, 1582

Discussion

19 U.S.C. §§165 and 1401a refer to "brothers and sisters." A single, sex-neutral term would suffice.

19 U.S.C. §1582 authorizes employment of female inspectors to search the person of women who go through customs. Insofar as the section refers to body searches, the constitutional right of privacy is relevant.[45] This right can be safeguarded, consistent with the equality principle: sex separation is not a violation of that principle where it relates to disrobing and intimate bodily functions and implies no stigma of inferiority or special treatment accorded one sex only.[46] However, the statute, as currently phrased, suggests that only womens' rights to privacy need be protected, or alternatively, that female inspectors will be employed solely for the purpose of conducting searches of the persons of females and not for other inspection jobs. These implications do not reflect current personnel policy, are inconsistent with the equality principle, and should not be reflected in statutory text.

Recommendations

19 U.S.C. §165(c)(1) -- substitute "siblings" for "brothers and sisters."

19 U.S.C. §1401a(g)(2)(A) -- substitute "siblings" for "brothers and sisters."

19 U.S.C. §1582 should read: "The Secretary of the Treasury may prescribe regulations for the search of persons and baggage and is authorized to require body searches to be carried out by inspectors of the same sex as the individual being searched...."

Title 20 -- Education

Sex-Based References:

20 U.S.C. §§75b, 76, 80a, 401, 904, 951, 1078a, 1322, 1532

Discussion

Terms with masculine connotations include:

"manpower"	20 U.S.C. §401, 1322(c)(3)
"masters"	20 U.S.C. §951
"men or man's"	20 U.S.C. §951, 1532
"chairman"	20 U.S.C. §1532
"manmade"	20 U.S.C. §1532
"men and women"	20 U.S.C. §75b, 76, 80a, 401

The term "fellowship" appears in 20 U.S.C. §1532. Although this word is masculine in origin, it need not be replaced since fellowships have not been awarded solely to men in recent years, and the term now has a sex-neutral connotation.

20 U.S.C. §1078a was identified by the computer because it contains the programmed word "sex"; the section prohibits sex discrimination in insured student loans.

20 U.S.C. §904 establishes and regulates leave for teachers in government schools overseas. Leave may be taken by a teacher for, inter alia, "maternity" purposes. No

leave is provided for fathers to care for children unless the children are ill or there is a personal emergency. It is appropriate that female teachers be permitted to use sick leave for periods during which they are physically disabled due to pregnancy or childbirth. Childbirth should thus be treated as a temporary physical disability for leave purposes. Since male teachers are not subject to these physical consequences of parenthood, such leave need not be granted to them.[47] However, both male and female teachers may wish to take "parental" leave to care for their infant children, and there is no justification for limiting such leave to female teachers.

The leave now in question accumulates at the rate of 1 day for each whole or partial calendar month of the school year or 10 days per year if the school year includes more than 8 months; no more than 75 days of leave may accumulate to the credit of a teacher at any one time. Since the amount of leave either male or female teachers could take for parental purposes would be quite limited, extension to both parents is recommended.

Recommendations

20 U.S.C. §75b -- replace "men and women" with "persons."

20 U.S.C. §76 -- replace "American men and women" with "Americans."

20 U.S.C. §80a -- replace "men and women" with "members."

20 U.S.C. §401 -- replace "men and women" with "people." replace "manpower" with "human resources."

20 U.S.C. §951 -- replace "man's" with "humanity's." replace "make men masters of their technology; and not its unthinking servant" with "enable humanity to control its technology; and not be its unthinking servant."

20 U.S.C. §1078a -- no change should be made.

20 U.S.C. §1322 -- replace "trained manpower" with "a trained work force."

20 U.S.C. §1532 -- replace "man's" with "humanity's." replace "his" with "its." replace "manmade" with "artificial." replace "Chairman" with "Chairperson" (twice).

20 U.S.C. §904 -- Replace "for maternity purposes" with "in the event of disabilities caused by pregnancy or childbirth or for purposes of caring for the teacher's infant child or children."

Title 21 -- Food and Drugs

Sex-Based References:

21 U.S.C. §§134, 321, 348, 352, 353, 357, 360b, 376, 392

Discussion

Throughout this Title, the term "man" is used to differentiate human beings from animals, and not to distinguish between human males and females. The drafting pattern is not uniform, for the sex-neutral terms "person," "human being," and "human body" are also used throughout Title 21. In conformance with usage, "human being(s)" or "human" should replace "man" in all identified sections.

Recommendations

21 U.S.C. §§134(b), 321(f), (u), (w), (x), 352, 353, 357, 392 -- replace "man" with "human beings."

21 U.S.C. §§321(g), (h) -- replace "man" with "human beings" and "the body of man or other animals" with "the bodies of humans or other animals."

21 U.S.C. §348(c)(3)(A) -- replace "man" with "human" (twice).

21 U.S.C. §348(c)(5)(B) -- replace "man" with "human beings."

21 U.S.C. §§360b(d), (e) -- replace "man or animal" with "human or animal" (four times) and "man or animals" with "human beings or animals" (twice).

21 U.S.C. §360b(m)(4)(A) -- replace "of man or of the animals" with "of human beings or of the animals."

21 U.S.C. §376 -- replace "man" with "human" (four times).

Title 22 -- Foreign Service

Sex-Based References:

22 U.S.C. §§214, 290, 1064-82, 1086, 1121, 1281, 1321, 2167

Discussion

Employment-related benefits (22 U.S.C. §§214, 1064-82, 1086, 1121)

22 U.S.C. §214 authorizes passport fee exemption for a widow (but not a widower) of a deceased member of the Armed Forces who is traveling to the gravesite of the deceased member.

22 U.C.S. §§1064-82 provide annuities for members of the foreign service and their surviving spouses. 22 U.S.C. §1064(b) lists as annuitants "widows," without regard to dependency; "widowers" must be "dependent" to qualify.

22 U.S.C. §1076 requires automatic reduction of a married male participant's annuity to provide for his surviving spouse; such reduction is a matter of election for a married female participant. It is not clear from the legislative history whether this differential is based on life expectancy tables or expectation of need.

Pursuant to 5 U.S.C.A. §7152, widowers should now qualify for annuities on the same basis as widows.

22 U.S.C. §§ 1086 and 1121, on return of excess annuity contributions and cost of living adjustments, are sex-neutral in effect, but use the unnecessary reference "surviving wife or husband."

Maternal care and family planning (22 U.S.C. §§290(f), 2167)

22 U.S.C. §§ 290(f) (Inter-American Foundation) and 2167(d) (Development assistance to foreign countries) include among aims of the programs "maternal and child care" and "family planning." The word "maternal," if used to relate solely to a biological function unique to women, would present no equal rights problem. However, a caveat should be noted with regard to "family planning" and health care unrelated to the unique physical characteristic of giving birth. Supplying family planning services or general health care solely to women would not comport with the equality principle.

Philippine immigration (22 U.S.C. §§1281, 1321)

22 U.S.C. §1281 provides for immigration without quota restriction for any Philippine citizen (sex not specified) who lived in the United States for 3 continuous years prior to 1941, and who resumed residence here during the period 1946--51. The same benefit is extended to the wife and unmarried children of the qualifying Philippine citizen.

Although qualifying female Philippine citizens may have been denied the right to have their families enter during the period 1946--51 without quota restrictions, an amendment to substitute spouse for wife would serve no purpose since the relevant time period has ended. 7 U.S.C. §1321 is a reciprocal section, dealing with immigration of United States citizens to the Philippines. Both sections are derived from a treaty with the Philippines.

Recommendations

22 U.S.C. §214--replace "widow" with "surviving spouse."

22 U.S.C. §1076--eliminate the married female participant's right to reduce annuity.

22 U.S.C. §§1086, 1121--replace "surviving wife or husband" with "surviving spouse."

22 U.S.C. §§290(f), 2167--add "parental...care" to "maternal...care."

The time period might be waived for any person adversely affected by the sex-based differential in 7 U.S.C. §1281. Apart from the likelihood that these provisions have no continuing vitality, their treaty basis indicates against further amendment.

Title 24 -- Hospitals, Asylums and Cemeteries

Sex-Based References:

24 U.S.C. §§44a, 52, 165

Discussion

24 U.S.C. §§44a and 52 are among the provisions dealing with the United States Soldiers Home, an institution for Army veterans established and regulated by Federal statute since 1883. Drafters of provisions governing the Home assumed an all-male inmate population. No gender qualifications should be placed on admission to any facility for veterans. 24 U.S.C. §44a provides for a deduction from the pay of each "enlisted man and warrant officer of the Regular Army" to support the Home. 24 U.S.C. §52 provides for allotment of an inmate's pension to his "child, wife or parent."

24 U.S.C. §165 concerns the superintendent (assumed to be a male) of St. Elizabeth's Hospital, and inmate pension disbursements. The pension of a male inmate may be disbursed for the benefit of "his wife, minor children and dependent parents"; the pension of a female inmate for the benefit of "her minor children." Upon a male inmate's death, the unexpended balance of his pension goes to "his wife, if living," if no wife survives him, to his minor

children, if he is not survived by wife or minor children, to the hospital. Upon a female inmate's death, the unexpended balance goes to her minor children; if there are none, to the hospital.

Pension disbursements should be regulated in the same way for male and female inmates of St. Elizabeth's. As currently drafted, 24 U.S.C. §165 reflects the pattern pervasive in the Code: an adult male is assumed responsible for family (including spouse and parents) support; an adult female, at most, for child support.

Recommendations

24 U.S.C. §44a --if still operative replace "enlisted men" with "enlisted members."

24 U.S.C. §52--replace "wife" with "spouse."

24 U.S.C. §165--female as well as male pronouns should be used; replace "wife" with "spouse."

Title 25 -- Indians

Sex-Based References:

25 U.S.C. §§137, 181, 182, 183, 184, 274, 286, 342, 371, 379, 657, 933, 973

Discussion

25 U.S.C. §§933 and 973 concern the distribution of assets to individual members of two tribes, the legal existence of which was terminated during the 1960s. Both sections implicity assume that tribal members are male by referring to members' spouses as wives, although the former section also refers to the "wife (or) husband" of an adult member. It is not clear whether these sections have any continuing application or whether the property distribution following termination has been completed, but replacement of the sex-based terms with "spouse" is recommended in keeping with a consistent program to conform terminology to the equality principle.

25 U.S.C. §182 makes every Indian woman who marries a citizen of the United States herself a citizen. Because of the Indian Citizenship Act of 1924 (which extended U.S. citizenship to all Native Americans), this provision is obsolete and should be repealed.

25 U.S.C. §184, concerning the rights of children born of marriages between white men and Indian women, affects only children born of marriages solemnized prior to June 7, 1897. The recommended extension to children born of all marriages of Indians to non-Indians solemnized in the same time period will thus affect a very small group of people.

25 U.S.C. §183 sets forth the facts necessary for proving the existence of a marriage between a white man and an Indian woman. This statute should be extended to cover all marriages between Indian and non-Indian persons or abolished.

25 U.S.C. §§137 and 181 pose more difficult policy questions. The former provision sets forth a work requirement for Indian males, but not for females, who receive supplies and annuities from the Government. This provision is reportedly no longer enforced by the Bureau of Indian Affairs. Accordingly, repeal would eliminate an unwarranted sex-based differential and conform the law to reality.

25 U.S.C. §181 provides that white men who marry Indian women shall not thereby acquire any rights to tribal property, privileges, or interests. According different treatment to male as distinguished from female non-Indians who marry Indians is sex discriminatory. No recommendation

is made for extension or repeal of this statute since the policy question of how marriages between Indians and non-Indians are to be treated is beyond the scope of this report. However, if the statute is revised and retained, the term "non-Indian" should be substituted for "white."

25 U.S.C. §274 encourages the employment of Indian children as assistants in Indian schools. It specifies that girls be employed as assistant matrons and boys as farmers and industrial teachers. Such sex-stereotyping is discriminatory and violates Federal policy as embodied in Title IX of the Education Amendments of 1972 and Title VII of the Civil Rights Act of 1964.

25 U.S.C. §342 permits the removal of the Southern Ute Indians from their present reservation to a new reservation with the consent of the adult male members of the tribe. It was passed in 1887, prior to the adoption of the 19th amendment prohibiting denial of the right to vote on the basis of sex. Individual tribal constitutions now also grant women the vote. Although it is not likely that the Government will ask the Southern Utes to move, the statute might be retained with the consent requirement amended to apply to all adult members of the tribe, without regard to sex.

25 U.S.C. §371 recognizes the validity for inheritance purposes of marriages between Indians contracted according to Indian customs and legitimizes the children of such unions. The section contains unnecessary references to the sexes of the parties to the marriage. More substantively, it specifies that children of such unions shall be deemed to be the legitimate issue of the father, but makes no such specification as to the mother. Apparently, it was regarded as beyond question that such children are the legitimate issue of the mother. The unique physical characteristic that the natural mother of a child is invariably present at the child's birth does not justify this distinction in all cases, as, for example, the children may be adopted. The child should be deemed the legitimate issue of both parents.

Recommendations

25 U.S.C. §933, 973 -- substitute "spouse" for "wife or husband."

25 U.S.C. §286 -- replace "father or mother" with "either parent."

25 U.S.C. §379 -- replace "father" (or) "mother" with "either parent."

25 U.S.C. §657 -- replace "fathers, mothers" with "parents," and "brothers, sisters" with "siblings;" leave "aunts, uncles" unchanged as no appropriate sex-neutral term is available.

25 U.S.C. §137 -- this inoperative provision should be repealed.

25 U.S.C. §181 -- substitute "non-Indian person" for "white man"

and delete "woman" or repeal statute.

25 U.S.C. §183 -- substitute "non-Indian" for "white man" and delete "woman."

25 U.S.C. §184 -- substitute "non-Indians" for "white men";
substitute "non-Indian" for "white man";
delete "woman" (twice).
substitute "Indian parent" for "mother";
change "her" to "her or his" (twice).

25 U.S.C. §274 -- replace "girls" with "children."
replace "assistant" with "assistants";
delete the words "matrons and Indian boys as."

25 U.S.C. §342 -- delete "male."

25 U.S.C. §371 -- replace "male and female Indian" with "two Indians";
replace "husband and wife" with "spouses";
replace "father" with "parents."

Title 16 -- Conservation

Sex-Based References:

16 U.S.C. §§112, 117c, 192, 218, 410r-3, 433k, 410s, 410t, 410v, 410x, 754, 760a, 1131

Discussion

16 U.S.C. §§112, 117(c), and 1131 appear on the printout because they include the word "man" as a generic term indicating all members of the human race.

16 U.S.C. §§192, 410(s),(t),(v),(x) contain proper names that include a programmed word: Section 192 mentions "Twin Sisters," a mountain in the Rocky Mountain Nationsal Park; section 410(s),(t),(v), and (x) establish "Minute Man" National Historical Park.

Two provisions concerning conveyances of parkland, 16 U.S.C. §§218 and 410r-3, appear on the printout because they include the term "his wife." 16 U.S.C. §218 uses language of the Kentucky deed and quitclaim to which the provision refers. Section 410r-3 refers to a tract of land described in a masters deed "in the proceeding entitled 'The Connecticut Mutual Life Insurance Company against Toni Iori, a single man; Peter Iori and Helen Iori, his wife, d/b/a Iori Bros., et al....'"

16 U.S.C. §433k establishes Whitman Mission National Historic Site as a "public national memorial to Marcus Whitman and his wife, Narcissa Prentiss Whitman...."

An arguably substantive sex differential appears in 16 U.S.C. §754, authorizing the commutation of rations "not to exceed $1 per man per day" for officers and crews of vessels of the Fish and Wildlife Service. While the phrase is not necessarily discriminatory in effect, it reflects the fact that currently no women are employed in the Fish and Wildlife Service. 16 U.S.C. §743 provides that "officers and men" of the Coast Guard be detailed for such service. Heretofore, non-reserve status in the Coast Guard has been limited to men. Women could not qualify for the Fish and Wildlife Service. Thus, the reference in 16 U.S.C. §754 to "man" accurately describes what has been an occupational exclusion. (16 U.S.C. §743 does not appear on the printout because "men" was not included as a programmed word.)

16 U.S.C. §760a provides for a limitation on fishing take "per unit of time, per man, or per gear." Read literally, the section indicates either that all takers of fish are male or that women who fish should not be limited in their catch.

Recommendations

16 U.S.C. §§112, 117c, 1131 -- change "man" to "human beings" or "humans."

16 U.S.C. §§192, 410(s),(t), (v),(x) --the proper names to which reference is made in these sections should be left undisturbed.

16 U.S.C. §§218, 410r-3--no change is recommended if these sections simply repeat deed or court record descriptions.

16 U.S.C. §743--replace "officers and men" of the Coast Guard with "officers and enlisted members" or "personnel."

16 U.S.C. §§754, 760--replace "man" with "person" or "individual."

Title 17 -- Copyrights

Sex-Based Reference:

17 U.S.C. §24

Title 17, providing for copyright protection of the creative work product of individuals, discriminates only in terminology in the identified section.

Discussion

Section §24 concerns duration, renewal, and extension of copyrights by the author or others, if the author is dead. In identifying those entitled to renew or extend the copyright, the section uses the sex-specific terms "widow" and "widower."

Recommendation

17 U.S.C. §27--substitute "surviving spouse" for "widow," "widower," the first time mentioned; "spouse" the second time mentioned.

Title 18 -- Crimes

Sex-Based References:

18 U.S.C. §§113, 714, 1111, 1114, 1153, 1384, 1735, 1737, 1952, 2031, 2032, 2198, 2421, 2422, 2423, 2424, 3056, 3185, 3242, 3567, 3614, 4082, 4251, 4321

Several of the sections listed on the printout are not sex discriminatory in substance but do raise terminological questions. Principal substantive differentials inconsistent with the equal rights principle appear in sections penalizing prostitution and related offenses, seduction, statutory rape, and rape. To eradicate sex-based discrimination in the catalogue of crimes, all retained sections with gender distinctions should be recast in sex-neutral form.

Within recent years there has been a growing legal movement in this country advocating the decriminalization of prostitution, i.e., laws classifying or referring to prostitution or solicitation by or on behalf of a prostitute should be repealed. Sections referring to the Federal Reformatory for Women and the National Training Schools for Boys require modification as part of an encompassing program to eliminate unwarranted sex segregation in correctional institutions.

S.1400 (Criminal Code Reform Act of 1973) would sex-neutralize the substance of several Title 18 provisions.[34]

Discussion

18 U.S.C. §§1735 and 1737, in conjunction with certain Title 39 provisions, regulate the mailing of sexually-oriented advertisements. The "sex" involved in these sections is unrelated to gender-based discrimination.

18 U.S.C. §2198 penalizes seduction of a woman passenger on an American ship by any employee on board; 18 U.S.C. §3614 provides that the fine imposed for a violation of 18 U.S.C. §2198 may be awarded to the woman seduced or her child if any. The behavior penalized by 18 U.S.C. §2198 is seduction and illicit connection "under promise of marriage, or by threats, or the exercise of authority, or solicitation, or the making of gifts or presents." Subsequent marriage to the seducer is a defense and no conviction may be had on the uncorroborated testimony of the woman.[35]

Only one aspect of the crime defined in 18 U.S.C. §2198 might merit retention because it is not covered elsewhere: the prohibition against inducing intercourse by exercise of authority.[36] In general, apart from custodial situations, the problem most often occurs when the importuned person is

young. Statutes prohibiting corruption of a minor and sex offenses against a minor should suffice.

Rape

Under 18 U.S.C. §§1153 and 2032, it is a crime for a person to have carnal knowledge of a female not his wife who has not reached 16 years of age.[37] "Rape" is defined in 10 U.S.C. §920 in the traditional manner as: "Any person...who commits an act of sexual intercourse with a female not his wife, by force or without her consent, is guilty of rape." The "statutory rape" offense is defined in these sections in much the same way: the victim must be a female and the offender a male, with the current penalty of 15 years imprisonment for a first offense.

These provisions clearly fail to comply with the equal rights principle. They fail to recognize that women of all ages are not the only targets of sexual assault; men and boys can also be the victims of rape. In the case of statutory rape, the immaturity and vulunerability of young people of both sexes could be protected through appropriately drawn, sex-neutral proscriptions. The Model Penal Code and S. 1400 §1633 require a substantial age differential between the offender and victim, thus declaring criminal only those situations in which overbearing or coercion may play a part.

During the 93d Congress, a number of rape-related bills were introduced. These fell into two categories, those which provided for research and those which redefined Federal rape laws. The first category is exemplified by Section 303 of H.R. 14214, the Health Revenue Sharing and Health Services Act of 1974, vetoed by the President but subsequently passed, which would have established a National Center for the Control and Prevention of Rape in the National Institute of Mental Health to "conduct research into the legal, social and medical aspects of rape" and to disseminate information and provide training materials related to rape prevention and control. (See H.Rept. No. 93-1524, 93d Cong., 2d Sess. (1974)).

S.1, S.1400/H.R. 6046, and H.R. 10047, which would have provided for a major revision of Federal substantive and procedural criminal law, each contained provisions redefining the Federal offense of rape to conform with the equal rights principle.

Prostitution

Title 18 encompasses the crime of prostitution in several sections: 18 U.S.C. §1952(b) (forbidding the use of interstate commerce with intent to distribute the proceeds of any unlawful activity, includes prostitution as defined under State law or the law of the United States); 18 U.S.C.

§1384 (prohibiting prostitution and the related activities of solicitation, procuring, setting up a house of ill fame, or using vehicles or buildings for prostitution near a military base); and 18 U.S.C. §§2421-24 (the Mann Act, prohibiting travel and transportation of women in interstate or foreign commerce for prostitution, debauchery, or other immoral purposes). The Mann Act also calls for registration of information about a recently entered alien woman or girl engaged in the business of prostitution; the registrant is then shielded from use of the information in a criminal prosecution.

These prostitution proscriptions are subject to several constitutional and policy objections. Prostitution, as a consensual act between adults, is arguably within the zone of privacy protected by recent constitutional decisions. See Griswold v. Connecticut, 381 U.S. 479 (1965); Eisenstadt v. Baird, 405 U.S. 438 (1972); Roe v. Wade, 410 U.S. 113 (1973). But sex-neutralizing the statutory language is unlikely to effect significant substantive change, for enforcement concentrates on the female even when male prostitution is encompassed in the same category. With the exception of several communities where it is police policy to arrest the client also, it is realistic to expect that

vigorous enforcement will be directed against the person who patronizes a prostitute.[38]

The Mann Act suffers from additional problems. It prohibits the transportation of women and girls for prostitution, debauchery, or any other immoral purpose. This language, which is not confined to illegal acts but encompasses "immoral" conduct as well, appears too broad and vague to the point where fair notice of the activity proscribed is hardly supplied. Moreover, the proscription is not limited to situations in which there is a financial factor. Thus, the act poses the invasion of privacy issue in an acute form.

The Mann Act also is offensive because of the image of women it perpetuates. In the year it was passed, the alien prostitution importation act (penalizing the entry of any alien for the purpose of prostitution) was amended to include boys as well as girls. The Mann Act was directed to a different group; it was meant to protect from "the villainous interstate and international traffic in women and girls," "those women and girls who, if given a fair chance, would, in all human probability, have been good wives and mothers and useful citizens." H.R. Rep. No. 47, 61st Cong., 2d Sess. 9-11 (1909). As the courts consistently proclaimed, the act was meant to protect weak women from bad

men. See, e.g., Caminetti v. United States, 242 U.S. 470 (1917); Gebardi v. United States, 287 U.S. 112 (1932).

S. 1400 §1841, introduced during the 93d Congress, defined and limited prostitution-related conduct subject to criminal penalty, and concentrated on financially-motivated prostitution business. The bill defined prostitution as engaging in a sexual act (as defined in S. 1400 §1636(a)) as consideration for anything of pecuniary value and prostitution business as the derivation of profits from prostitution by a person who acts under the control or supervision of another person.

Although S. 1400 §1841, in contrast to the Mann Act which it would replace, is cast in sex-neutral form, retaining prostitution business as a crime in a criminal code is open to debate. Reliable studies indicate that prostitution is not a major factor in the spread of venereal disease,[39] and that prostitution plays a small and declining role in organized crime operations.[40]

18 U.S.C. §3056, providing Secret Service protection for the wife of a former President during his life and for the widow until her death or remarriage, should be extended to cover the spouse or surviving spouse of a woman President.[41]

A further unwarranted male reference appears in 18 U.S.C. §714, which regulates use of the "Johnny Horizon" antilitter symbol. According to the congressional reports, this tall, lean figure with sportsclothes, hiking boots, and a field jacket is "a representative of a rugged outdoorsman who loves our forests, deserts, mountains, lakes, streams and terrain."[42] This sex stereotype of the outdoorsperson and protector of the environment should be supplemented with a female figure promoting the same values. The two figures should be depicted as persons of equal strength of character, displaying equal familiarity and concern with the terrain of our country.

Two sections of Title 18 refer to sexually-segregated institutions: 18 U.S.C. §4082 (the National Training School for Boys), and 18 U.S.C. §4321 (Board of Advisers of the Federal Reformatory for Women). Sex-segregated adult or juvenile institutions are obviously separate, and in a variety of ways, unequal. Differences in training programs, distance from cities and relatives, work-release programs, educational opportunities, security, and other conditions redound to the benefit of men in some instances and women in others.[43] The feasibility of penal institutions housing both males and females has been studied by the LEAA and other special projects; their findings, so far, have been

favorable. If the grand design of such institutions is to prepare inmates for return to the community as persons equipped to benefit from and contribute to civil society, then perpetuation of single-sex institutions should be rejected.

The equal rights principle looks toward a world in which men and women function as full and equal partners, with artificial barriers removed and opportunity unaffected by a person's gender. Preparation for such a world requires elimination of sex separation in all public institutions where education and training occur. While the personal privacy principle permits maintenance of separate sleeping and bathing facilities, no other facilities, e.g., work, school, or cafeteria, should be maintained for one sex only.[44]

18 U.S.C. §4082, ordering the Attorney General to commit convicted offenders to "available, suitable, and appropriate" institutions, is not sex discriminatory on its face. It should not be applied, as it now is, to permit consideration of a person's gender as a factor making a particular institution appropriate or suitable for that person.

The Senate bill, S. 1400, contains several sections on the Board of Correction and the Parole Commission created by

that act. The provisions do not appear sex discriminatory on their face; implementing regulations should not deviate from this neutrality.

Recommendations

18 U.S.C. §3056--Change "wife" and "widow" to "spouse" and "surviving spouse."

18 U.S.C. §714--Amend the statute to provide for a female counterpart to Johnny Horizon; she should promote the same values as he does on an equal basis.

18 U.S.C. §1114--Replace "enlisted man" with "enlisted member" or "enlisted person."

18 U.S.C. §4082--Replace "brother or sister" with "sibling."

18 U.S.C. §§2198 and 3614 -- Eliminate these sections.

18 U.S.C. §2032 -- Eliminate the phrase "carnal knowledge of any female, not his wife who has not attained the age of sixteen years" and substitute a Federal, sex-neutral definition of the offense patterned after S. 1400 §1633: A person is guilty of an offense if he engages in a sexual act with another person, not his spouse, and (1) compels the other person to participate: (A) by force or (B) by threatening or placing the other person in fear that any person will imminently be subjected to death, serious bodily injury, or kidnapping; (2) has substantially impaired the other person's power to appraise or control the conduct by administering or employing a drug or intoxicant without the knowledge or against the will of such other person, or by other means; or (3) the other person is, in fact, less than 12 years old.

This report recommends alteration of pronoun usage throughout the Senate bill S. 1400 to conform with the proposed sex-neutral terminology format. S. 1400 retains use of the masculine pronoun to cover individuals of both sexes.

18 U.S.C. §1153 -- Eliminate the phrase "carnal knowledge of any female, not his wife" and substitute offense as set forth in S. 1400, §1633. a Federal, sex-neutral definition of the offense patterned after S. 1400 §1633.

A sex-neutral definition of rape, such as the one set forth in S. 1400 §1631 should be added to Title 18 or Title 10 and referred to throughout for the definition of the offense.

18 U.S.C. §§113, 1111, 2031, 3185, 3242, 4251, --These need no change if a sex-neutral definition of rape is adopted.

18 U.S.C. §1153 -- Change "female" to "person," and revise this section so that Native Americans are tried in Federal court under Federal law.

18 U.S.C. §4082 -- Change the name and eliminate the single sex character of the National Training School for Boys.

18 U.S.C. §4321 -- Change the name and eliminate the single sex character of the Federal Reformatory for Women as part of the larger reorganization of the Federal correctional system necessitated by the equal rights principle.

18 U.S.C. §§1384, 1952(b), 2421-2424 --Repeal these sections.

Title 19 -- Customs Duties

Sex-Based References:

19 U.S.C. §§165, 1401a, 1582

Discussion

19 U.S.C. §§165 and 1401a refer to "brothers and sisters." A single, sex-neutral term would suffice.

19 U.S.C. §1582 authorizes employment of female inspectors to search the person of women who go through customs. Insofar as the section refers to body searches, the constitutional right of privacy is relevant.[45] This right can be safeguarded, consistent with the equality principle: sex separation is not a violation of that principle where it relates to disrobing and intimate bodily functions and implies no stigma of inferiority or special treatment accorded one sex only.[46] However, the statute, as currently phrased, suggests that only womens' rights to privacy need be protected, or alternatively, that female inspectors will be employed solely for the purpose of conducting searches of the persons of females and not for other inspection jobs. These implications do not reflect current personnel policy, are inconsistent with the equality principle, and should not be reflected in statutory text.

Recommendations

19 U.S.C. §165(c)(1) -- substitute "siblings" for "brothers and sisters."

19 U.S.C. §1401a(g)(2)(A) -- substitute "siblings" for "brothers and sisters."

19 U.S.C. §1582 should read: "The Secretary of the Treasury may prescribe regulations for the search of persons and baggage and is authorized to require body searches to be carried out by inspectors of the same sex as the individual being searched...."

Title 20 -- Education

Sex-Based References:

20 U.S.C. §§75b, 76, 80a, 401, 904, 951, 1078a, 1322, 1532

Discussion

Terms with masculine connotations include:

"manpower"	20 U.S.C. §401, 1322(c)(3)
"masters"	20 U.S.C. §951
"men or man's"	20 U.S.C. §951, 1532
"chairman"	20 U.S.C. §1532
"manmade"	20 U.S.C. §1532
"men and women"	20 U.S.C. §75b, 76, 80a, 401

The term "fellowship" appears in 20 U.S.C. §1532. Although this word is masculine in origin, it need not be replaced since fellowships have not been awarded solely to men in recent years, and the term now has a sex-neutral connotation.

20 U.S.C. §1078a was identified by the computer because it contains the programmed word "sex"; the section prohibits sex discrimination in insured student loans.

20 U.S.C. §904 establishes and regulates leave for teachers in government schools overseas. Leave may be taken by a teacher for, inter alia, "maternity" purposes. No

leave is provided for fathers to care for children unless the children are ill or there is a personal emergency. It is appropriate that female teachers be permitted to use sick leave for periods during which they are physically disabled due to pregnancy or childbirth. Childbirth should thus be treated as a temporary physical disability for leave purposes. Since male teachers are not subject to these physical consequences of parenthood, such leave need not be granted to them.[47] However, both male and female teachers may wish to take "parental" leave to care for their infant children, and there is no justification for limiting such leave to female teachers.

The leave now in question accumulates at the rate of 1 day for each whole or partial calendar month of the school year or 10 days per year if the school year includes more than 8 months; no more than 75 days of leave may accumulate to the credit of a teacher at any one time. Since the amount of leave either male or female teachers could take for parental purposes would be quite limited, extension to both parents is recommended.

Recommendations

20 U.S.C. §75b -- replace "men and women" with "persons."

20 U.S.C. §76 -- replace "American men and women" with "Americans."

20 U.S.C. §80a -- replace "men and women" with "members."

20 U.S.C. §401 -- replace "men and women" with "people." replace "manpower" with "human resources."

20 U.S.C. §951 -- replace "man's" with "humanity's." replace "make men masters of their technology; and not its unthinking servant" with "enable humanity to control its technology; and not be its unthinking servant."

20 U.S.C. §1078a -- no change should be made.

20 U.S.C. §1322 -- replace "trained manpower" with "a trained work force."

20 U.S.C. §1532 -- replace "man's" with "humanity's." replace "his" with "its." replace "manmade" with "artificial." replace "Chairman" with "Chairperson"(twice).

20 U.S.C. §904 -- Replace "for maternity purposes" with "in the event of disabilities caused by pregnancy or childbirth or for purposes of caring for the teacher's infant child or children."

Title 21 -- Food and Drugs

Sex-Based References:

21 U.S.C. §§134, 321, 348, 352, 353, 357, 360b, 376, 392

Discussion

Throughout this Title, the term "man" is used to differentiate human beings from animals, and not to distinguish between human males and females. The drafting pattern is not uniform, for the sex-neutral terms "person," "human being," and "human body" are also used throughout Title 21. In conformance with usage, "human being(s)" or "human" should replace "man" in all identified sections.

Recommendations

21 U.S.C. §§134(b), 321(f), (u), (w), (x), 352, 353, 357, 392 -- replace "man" with "human beings."

21 U.S.C. §§321(g), (h) -- replace "man" with "human beings" and "the body of man or other animals" with "the bodies of humans or other animals."

21 U.S.C. §348(c)(3)(A) -- replace "man" with "human" (twice).

21 U.S.C. §348(c)(5)(B) -- replace "man" with "human beings."

21 U.S.C. §§360b(d), (e) -- replace "man or animal" with "human or animal" (four times) and "man or animals" with "human beings or animals" (twice).

21 U.S.C. §360b(m)(4)(A) -- replace "of man or of the animals" with "of human beings or of the animals."

21 U.S.C. §376 -- replace "man" with "human" (four times).

Title 22 -- Foreign Service

Sex-Based References:

22 U.S.C. §§214, 290, 1064-82, 1086, 1121, 1281, 1321, 2167

Discussion

Employment-related benefits (22 U.S.C. §§214, 1064-82, 1086, 1121)

22 U.S.C. §214 authorizes passport fee exemption for a widow (but not a widower) of a deceased member of the Armed Forces who is traveling to the gravesite of the deceased member.

22 U.C.S. §§1064-82 provide annuities for members of the foreign service and their surviving spouses. 22 U.S.C. §1064(b) lists as annuitants "widows," without regard to dependency; "widowers" must be "dependent" to qualify.

22 U.S.C. §1076 requires automatic reduction of a married male participant's annuity to provide for his surviving spouse; such reduction is a matter of election for a married female participant. It is not clear from the legislative history whether this differential is based on life expectancy tables or expectation of need.

Pursuant to 5 U.S.C.A. §7152, widowers should now qualify for annuities on the same basis as widows.

22 U.S.C. §§ 1086 and 1121, on return of excess annuity contributions and cost of living adjustments, are sex-neutral in effect, but use the unnecessary reference "surviving wife or husband."

Maternal care and family planning (22 U.S.C. §§290(f), 2167)

22 U.S.C. §§ 290(f) (Inter-American Foundation) and 2167(d) (Development assistance to foreign countries) include among aims of the programs "maternal and child care" and "family planning." The word "maternal," if used to relate solely to a biological function unique to women, would present no equal rights problem. However, a caveat should be noted with regard to "family planning" and health care unrelated to the unique physical characteristic of giving birth. Supplying family planning services or general health care solely to women would not comport with the equality principle.

Philippine immigration (22 U.S.C. §§1281, 1321)

22 U.S.C. §1281 provides for immigration without quota restriction for any Philippine citizen (sex not specified) who lived in the United States for 3 continuous years prior to 1941, and who resumed residence here during the period 1946--51. The same benefit is extended to the wife and unmarried children of the qualifying Philippine citizen.

Although qualifying female Philippine citizens may have been denied the right to have their families enter during the period 1946--51 without quota restrictions, an amendment to substitute spouse for wife would serve no purpose since the relevant time period has ended. 7 U.S.C. §1321 is a reciprocal section, dealing with immigration of United States citizens to the Philippines. Both sections are derived from a treaty with the Philippines.

Recommendations

22 U.S.C. §214--replace "widow" with "surviving spouse."

22 U.S.C. §1076--eliminate the married female participant's right to reduce annuity.

22 U.S.C. §§1086, 1121--replace "surviving wife or husband" with "surviving spouse."

22 U.S.C. §§290(f), 2167--add "parental...care" to "maternal...care."

The time period might be waived for any person adversely affected by the sex-based differential in 7 U.S.C. §1281. Apart from the likelihood that these provisions have no continuing vitality, their treaty basis indicates against further amendment.

Title 24 -- Hospitals, Asylums and Cemeteries

Sex-Based References:

24 U.S.C. §§44a, 52, 165

Discussion

24 U.S.C. §§44a and 52 are among the provisions dealing with the United States Soldiers Home, an institution for Army veterans established and regulated by Federal statute since 1883. Drafters of provisions governing the Home assumed an all-male inmate population. No gender qualifications should be placed on admission to any facility for veterans. 24 U.S.C. §44a provides for a deduction from the pay of each "enlisted man and warrant officer of the Regular Army" to support the Home. 24 U.S.C. §52 provides for allotment of an inmate's pension to his "child, wife or parent."

24 U.S.C. §165 concerns the superintendent (assumed to be a male) of St. Elizabeth's Hospital, and inmate pension disbursements. The pension of a male inmate may be disbursed for the benefit of "his wife, minor children and dependent parents"; the pension of a female inmate for the benefit of "her minor children." Upon a male inmate's death, the unexpended balance of his pension goes to "his wife, if living," if no wife survives him, to his minor

children, if he is not survived by wife or minor children, to the hospital. Upon a female inmate's death, the unexpended balance goes to her minor children; if there are none, to the hospital.

Pension disbursements should be regulated in the same way for male and female inmates of St. Elizabeth's. As currently drafted, 24 U.S.C. §165 reflects the pattern pervasive in the Code: an adult male is assumed responsible for family (including spouse and parents) support; an adult female, at most, for child support.

Recommendations

24 U.S.C. §44a --if still operative replace "enlisted men" with "enlisted members."

24 U.S.C. §52--replace "wife" with "spouse."

24 U.S.C. §165--female as well as male pronouns should be used; replace "wife" with "spouse."

Title 25 -- Indians

Sex-Based References:

25 U.S.C. §§137, 181, 182, 183, 184, 274, 286, 342, 371, 379, 657, 933, 973

Discussion

25 U.S.C. §§933 and 973 concern the distribution of assets to individual members of two tribes, the legal existence of which was terminated during the 1960s. Both sections implicity assume that tribal members are male by referring to members' spouses as wives, although the former section also refers to the "wife (or) husband" of an adult member. It is not clear whether these sections have any continuing application or whether the property distribution following termination has been completed, but replacement of the sex-based terms with "spouse" is recommended in keeping with a consistent program to conform terminology to the equality principle.

25 U.S.C. §182 makes every Indian woman who marries a citizen of the United States herself a citizen. Because of the Indian Citizenship Act of 1924 (which extended U.S. citizenship to all Native Americans), this provision is obsolete and should be repealed.

25 U.S.C. §184, concerning the rights of children born of marriages between white men and Indian women, affects only children born of marriages solemnized prior to June 7, 1897. The recommended extension to children born of all marriages of Indians to non-Indians solemnized in the same time period will thus affect a very small group of people.

25 U.S.C. §183 sets forth the facts necessary for proving the existence of a marriage between a white man and an Indian woman. This statute should be extended to cover all marriages between Indian and non-Indian persons or abolished.

25 U.S.C. §§137 and 181 pose more difficult policy questions. The former provision sets forth a work requirement for Indian males, but not for females, who receive supplies and annuities from the Government. This provision is reportedly no longer enforced by the Bureau of Indian Affairs. Accordingly, repeal would eliminate an unwarranted sex-based differential and conform the law to reality.

25 U.S.C. §181 provides that white men who marry Indian women shall not thereby acquire any rights to tribal property, privileges, or interests. According different treatment to male as distinguished from female non-Indians who marry Indians is sex discriminatory. No recommendation

is made for extension or repeal of this statute since the policy question of how marriages between Indians and non-Indians are to be treated is beyond the scope of this report. However, if the statute is revised and retained, the term "non-Indian" should be substituted for "white."

25 U.S.C. §274 encourages the employment of Indian children as assistants in Indian schools. It specifies that girls be employed as assistant matrons and boys as farmers and industrial teachers. Such sex-stereotyping is discriminatory and violates Federal policy as embodied in Title IX of the Education Amendments of 1972 and Title VII of the Civil Rights Act of 1964.

25 U.S.C. §342 permits the removal of the Southern Ute Indians from their present reservation to a new reservation with the consent of the adult male members of the tribe. It was passed in 1887, prior to the adoption of the 19th amendment prohibiting denial of the right to vote on the basis of sex. Individual tribal constitutions now also grant women the vote. Although it is not likely that the Government will ask the Southern Utes to move, the statute might be retained with the consent requirement amended to apply to all adult members of the tribe, without regard to sex.

25 U.S.C. §371 recognizes the validity for inheritance purposes of marriages between Indians contracted according to Indian customs and legitimizes the children of such unions. The section contains unnecessary references to the sexes of the parties to the marriage. More substantively, it specifies that children of such unions shall be deemed to be the legitimate issue of the father, but makes no such specification as to the mother. Apparently, it was regarded as beyond question that such children are the legitimate issue of the mother. The unique physical characteristic that the natural mother of a child is invariably present at the child's birth does not justify this distinction in all cases, as, for example, the children may be adopted. The child should be deemed the legitimate issue of both parents.

Recommendations

25 U.S.C. §933, 973 -- substitute "spouse" for "wife or husband."

25 U.S.C. §286 -- replace "father or mother" with "either parent."

25 U.S.C. §379 -- replace "father" (or) "mother" with "either parent."

25 U.S.C. §657 -- replace "fathers, mothers" with "parents," and "brothers, sisters" with "siblings;" leave "aunts, uncles" unchanged as no appropriate sex-neutral term is available.

25 U.S.C. §137 -- this inoperative provision should be repealed.

25 U.S.C. §181 -- substitute "non-Indian person" for "white man"

and delete "woman" or repeal statute.

25 U.S.C. §183 -- substitute "non-Indian" for "white man" and
delete "woman."

25 U.S.C. §184 -- substitute "non-Indians" for "white men";
substitute "non-Indian" for "white man";
delete "woman" (twice).
substitute "Indian parent" for "mother";
change "her" to "her or his" (twice).

25 U.S.C. §274 -- replace "girls" with "children."
replace "assistant" with "assistants";
delete the words "matrons and Indian
boys as."

25 U.S.C. §342 -- delete "male."

25 U.S.C. §371 -- replace "male and female Indian" with
"two Indians";
replace "husband and wife" with "spouses";
replace "father" with "parents."

Title 26 -- Internal Revenue Code

Sex-Based References:

26 U.S.C. §§2, 4, 37, 46, 48, 50A, 51, 58, 71, 72, 101, 121, 142, 152, 154, 165, 179, 213, 214, 215, 217, 267, 274, 341, 425, 544, 554, 672, 682, 911, 981, 1034, 1211, 1239, 1244, 1251, 1302, 1313, 1371, 1372, 1402, 1563, 2515, 2516, 3121, 3306, 3402, 4253, 4905, 5143, 6013, 6014, 6015, 6017, 6046, 6096, 6212, 7448

Discussion

Although the Internal Revenue Code has been drafted to avoid the inference that taxpayers are males, unnecessary gender references abound in Title 26. Included are:

"husband or wife"	26 U.S.C. §§4(c) (3 times), 46(a)(4), 48(c)(2)(B), 50A(a)(4), 58(a), 911, 981(e)(4), 1[illegible](b)(2), 1251(b)(2)(c), 1543(d)(2)
"husband and wife"	26 U.S.C. §§2(a), 37(i), 51(a)(2)(B)(1), 58(a), 121(d)(1), 142(a), 179(b), 274(b)(2), 911, 981(b),(c)(2), 1034(g), 1239(a)(1), 1244(b)(2), 1302(c)(4), 1313(c)(1), 1313(c)(1), 1371(c), 1372(g), 2515(d), 2516, 3402(m)(3), 6013(a) (3 times), (b) (twice), (c), (d), 6014(b), 6015(b) (twice), 6017, 6096(a), 6212(b), 7701(a)(17)(title)
"either the husband or wife"	26 U.S.C. §§6013(a)(1), 6015(b)
"widow or widower"	26 U.S.C. §37(b)
"son or daughter"	26 U.S.C. §152(a)(1)

"stepson or step-daughter"	26 U.S.C. §152(a)(2)
"brother, sister, stepbrother or stepsister"	26 U.S.C. §152(a)(3)
"father or mother"	26 U.S.C. §152(a)(4)
"stepfather or stepmother"	26 U.S.C. §152(a)(5)
"son or daughter of a brother or sister"	26 U.S.C. §152(a)(6)
"brother or sister of the father or mother"	26 U.S.C. §152(a)(7)
"son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law"	26 U.S.C. §152(a)(8)
"brother or sister of the father or mother"	26 U.S.C. §152(a)(10)(A)
"brothers and sisters"	26 U.S.C. §§267(c)(4), 341(d), 425(d), 544(a)(2), 554(a)(2), 672(c)(2)
"mother or father"	26 U.S.C. §§213(a)(1)(A)(i), 672(c)(2), 3306(c)(5)
"son" or "daughter"	26 U.S.C. §3121(b)(3)(B), 3305(C)(5)
"stepson" or "step-daughter"	26 U.S.C. §3121(b)(3)(B)

Sex-neutral terms such as "a married couple," "married individuals," "sibling(s)," "child(ren)," "parent(s),"

"step-sibling(s)," "stepchild(ren)," "stepparent(s)," and "surviving spouse" should be substituted wherever appropriate.

Provisions of the Internal Revenue Code dealing with alimony and support are written in terms of husband as payor, wife as payee. For example, 26 U.S.C. §71 stipulates that in the case of a divorced or separated couple, periodic payments made by a husband in discharge of a marital obligation are included in the wife's gross income. 26 U.S.C. §101(e) exempts from gross income payments received by reason of the death of an insured individual, except those includable in a wife's gross income pursuant to 26 U.S.C. §§71 and 682. Section 152(b)(4) excludes treatment of an alimony payment as a husband's payment for dependent support. Section 72(k) excludes from the general rule governing annuities that amount paid as alimony included in the wife's gross income. 26 U.S.C. §215 provides that the husband's payment to a separated or divorced wife includable in the wife's gross income can be deducted by the husband. 26 U.S.C. §682 concerns estate or trust income paid to a divorced or separated wife.

Sex-neutralizing these provisions in substance is 26 U.S.C. §7701(a)(17), a definitional section, which states that "husband" means "wife" and "wife" means "husband" where

payments described in 26 U.S.C. §§71, 152(b)(4), 215 and 682 are made by a wife to a former husband. In lieu of relying on a definition section, all alimony and support provisions should be recast in sex-neutral language. A model that might be utilized for appropriate terminology is the Uniform Marriage and Divorce Act.[48]

26 U.S.C. §1402(a)(5)(A) provides that, for couples in community property jurisdictions, all gross income and deductions attributable to a trade or business shall be treated as gross income and deductions of the husband, unless the wife exercises substantially all the management and control, in which case the attribution would be to her.

This provision apparently has a benign purpose: to avoid the imposition of a double self-employment tax on married couples in community property States. The provision might be recast to state that the gross income and deductions shall be attributed to the spouse who in fact exercises dominant control of the business.

Section 1563(a)(2) refers to a "brother-sister controlled [corporate] group." No change is needed in this descriptive term.

The reference in the title of 26 U.S.C. §4253(d) to "servicemen" should be changed to "service member" or "service personnel."

Under 26 U.S.C. §4905 a deceased taxpayer's "wife or child" may carry on his business without paying an additional tax on the business or trade. A similiar provision, 26 U.S.C. §5143(d)(2), exempts "a husband or wife succeeding to the business of his or her living spouse." Section 4905 should be neutralized in the same manner.

Concerning the issue of tax treatment of a surviving spouse, 26 U.S.C. §7448 refers to annuities to "widows and dependent children of judges" with no corresponding reference to widowers. The reference should be to "surviving spouse." Further, 26 U.S.C. §7448(a)(6) defines widow to mean a "surviving wife" married to the individual for at least 2 years prior to his death or the mother of issue by that marriage who has not remarried.

Recommendations

26 U.S.C. §§4(c) (three times), 46(a)(4), 48(c)(2)(B), 50A(a)(4), 58(a), 911, 981(e)(4), 112(b)(2), 1251(b)(2)(c), 1543(d)(2)--replace "husband or wife" with "spouse."

26 U.S.C. §§2(a), 37(i), 51(a)(2)(B)(1), 58(a), 121(d)(1), 142(a), 179(b), 274(b)(2), 911, 981(b),(c)(2), 1034(g), 1239(a)(1), 1244(b)(2), 1302(c)(4), 1313(c)(1), (twice), 1371(c), 1372(g), 2515(d), 2516, 3402(m)(3), 6013(a) (three times),(b) (twice),(c),(d), 6014(b), 6015(b) (twice), 6017, 6096(a), 6212(b)--replace "husband and wife" with "married couple" or "spouses."

26 U.S.C. §37(b)--replace "widow or widower" with "surviving spouse."

26 U.S.C. §71(a)(1)--replace "wife" with "person." replace "her husband" with "her/his spouse." replace "the wife's" with "that person's." replace "the husband" with "her/his spouse."

26 U.S.C. §71(a)(2)--replace "wife is separated from her husband" with "married couple is separated." Omit "the wife's." replace "husband and wife" with "married couple."

26 U.S.C. §71(a)(3)--replace "wife is separated from her husband" with "married couple is separated." Omit "the wife's." replace "by her" with "by one spouse." replace "her husband" with "the other spouse." replace "the husband" with "that spouse." replace "for her" with "the other's." replace "husband and wife" with "married couple."

26 U.S.C. §72(k)(1)--replace "wife" with "spouse."

26 U.S.C. §72(k)(2)--replace "wife" with "spouse."

26 U.S.C. §101(e)(1)--replace "the wife" with "a spouse."

26 U.S.C. §101(e)(2)--replace "wife" with "spouse."

26 U.S.C. §152(a)(1)--replace "son or daughter of the taxpayer, or a descendant of either" with "child of the taxpayer, or a descendant of the child."

26 U.S.C. §152(a)(2)--replace "stepson or stepdaughter" with "stepchild."

26 U.S.C. §152(a)(3)--replace "brother, sister, stepbrother or stepsister" with "sibling or stepsibling."

26 U.S.C. §152(a)(4)--replace "father or mother of the taxpayer or an ancestor of either" with "parent of the taxpayer, or an ancestor of the parent."

26 U.S.C. §152(a)(5)--replace "stepfather or stepmother" with "stepparent."

26 U.S.C. §152(a)(6)--replace "son or daughter of a brother or sister" with "child of a sibling."

26 U.S.C. §152(a)(7)--replace "brother or sister of the father or mother" with "sibling of a parent."

26 U.S.C. §152(a)(8)--no change in language is recommended for this section because there are no sex-neutral alternatives.

26 U.S.C. §152(a)(10)(A)--replace "brother or sister of the father or mother" with "sibling of the parent."

26 U.S.C. §152(b)(1)--replace "brother" and "sister" with "sibling." replace "brother or sister" with "sibling."

26 U.S.C. §152(b)(4)--replace "wife" with "spouse"(twice). replace "her husband" with "her/his spouse."

26 U.S.C. §§213(a)(1)(A)(i), 672(c)(2), 3306(c)(5)--replace "mother or father" with "parent."

26 U.S.C. §215(a)--replace "husband" with "spouse." replace "his wife" with "her/his spouse." replace "husband's" with "spouse's"(twice).

26 U.S.C. §§267(c)(4), 341(d), 425(d), 544(a)(2), 554(a)(2), 672(c)(2)--replace "brothers and sisters" with "siblings."

26 U.S.C. §682(a)--replace "wife" with "spouse" in section title. replace "wife" with "spouse"(twice). replace "her husband" with "her/his spouse"(twice). replace "such husband" with "her/his spouse"(twice.

26 U.S.C. §682(b)--replace "wife" with "spouse" in section title. replace "wife" with "spouse."

26 U.S.C. §682(c)--replace "husband" and "wife" with "spouse."

26 U.S.C. §1402(a)(5)(A)--replace "husband unless the wife" with "spouse who in fact." Omit "in which case all...of the wife."

26 U.S.C. §1563(a)(2)--no change is recommended for this section.

26 U.S.C. §3121(b)(3)(B), 3306(c)(5)--replace "son" or "daughter" with "child(ren)."

26 U.S.C. §3121(b)(3)(B)--replace "stepson" or "stepdaughter" with "stepchild(ren)."

26 U.S.C. §4253(d)--replace "servicemen" with "service member" or "service personnel" in the section title.

26 U.S.C. §4905--replace "wife" with "spouse."

26 U.S.C. §5143(d)(2)--replace "husband or wife" with "spouse."

26 U.S.C. §§6013(a)(1), 6015(b)--replace "either the husband or the wife" with "either spouse."

26 U.S.C. §7448--replace "widow" with "surviving spouse."

26 U.S.C. §§7448(a)(6),(d),(h)(1),(h)(2)(three times),(h)(3)(four times),(j)(1)(B)(ii),(j)(1)(B)(vi),(m),(n),(o),(q)--replace "widow" or "widower" with "surviving spouse."

26 U.S.C. §7701(a)(17)--replace "husband and wife" with "spouses." replace "the term 'wife' shall be read 'former wife' and the term 'husband' shall be read 'former husband'" with with "the term 'spouse' shall be read 'former spouse.'" Omit "and, if the payments described... "wife" shall be read "husband." replace the section title, "Husband and Wife" with "Spouses."

Title 28 -- Judiciary and Judicial Process

Sex-Based References:

28 U.S.C. §§375, 376, 604[49]

Discussion

These sections provide annuities for widows of Federal judges. Pursuant to 5 U.S.C. §7152(c), widowers now qualify for annuities on the same basis as widows.

Although the sex-based differential is no longer operative, sections 376 and 605(a)(7) should be amended to avoid unnecessary gender references.

28 U.S.C. §375 refers only to Justices of the Supreme Court who had resigned, were retired, or in active service in August 1972. All members of this limited class are male. Amendment would achieve semantic consistency, but the section might be left undisturbed since it accurately reflects historical fact.

Recommendations

28 U.S.C. §§376, 605(a)(7)--replace "widows" with "surviving spouse."

28 U.S.C. §375--No change necessary.

Title 29 -- Labor

Sex-Based References:

29 U.S.C. §§1, 7, 11, 12, 13, 14, 49b, 49j, 206, 208, 504, 524, 557, 651

Discussion

29 U.S.C. §1 describes the functions of the Bureau of Labor Statistics as including the dissemination of information on "the earnings of laboring men and women." Under 29 U.S.C. §7, data gathered by the Bureau includes the sex of employees in "the Territory of Hawaii." 29 U.S.C. §49b establishes a national system of employment offices for "men, women, and juniors." 29 U.S.C. §49j provides for the formation of a Federal advisory council and similar State councils composed of "men and women" representing employers, employees in equal numbers, and the public for the purposes of formulating policies and discussing problems relating to employment. 29 U.S.C. §651 declares it national policy to assure "every working man and woman in the nation safe and healthful working conditions...."

29 U.S.C. §206, the minimum wage provision of the Fair Labor Standards Act, contains the Equal Pay Act of 1963. This provision, 29 U.S.C. §206(d), prohibits wage discrimination on the basis of sex. 29 U.S.C. §206(a)(4)

establishes a minimum wage for a "seaman" on an American vessel. 29 U.S.C. §208 concerns classifications for the purpose of fixing minimum wages in Puerto Rico and the Virgin Islands; classifications on the basis of sex are prohibited by 29 U.S.C. §208(c).

29 U.S.C. §504 excludes persons who have been convicted of specified crimes, including rape, from holding office in labor organizations.[50] 29 U.S.C. §524 declares that antecedent provisions shall not be construed to impair State authority to enact and enforce general criminal laws with respect to, inter alia, rape. Although rape has been defined in sex-neutral terms in recently overhauled criminal laws, most States have not yet revised their penal codes.

29 U.S.C. §§11-14, 557 establish a Women's Bureau in the Department of Labor, "to formulate standards and policies which shall promote the welfare of wage-earning women, improve their working conditions, increase their efficiency, and advance their opportunities for profitable employment." Under 29 U.S.C. §12 the director of the Bureau must be a woman. 29 U.S.C. §13 invests the Bureau with investigative and reportorial functions. Current literature describing the Bureau's work indicates that its principal task is the acquisition and dissemination of information about employment opportunities for women.

Recommendations

29 U.S.C. §1 -- replace "laboring men and women" with "laboring persons" or "workers."

29 U.S.C. §7 -- although gathering information on the sex of employees in Hawaii is not discriminatory and may serve a useful sociological purpose, the provision appears to be obsolete since Hawaii is no longer a "territory."

29 U.S.C. §49b -- replace "men, women, and juniors" with "all persons."

29 U.S.C. §49j -- replace "men and women" with "persons" or "individuals."

29 U.S.C. §651 -- replace "working man and woman" with "working person" or "worker."

29 U.S.C. §206(a)(4) -- replace "seaman" with "crew member."

29 U.S.C. §206(a)(4) -- no change is required.

Redefinition of rape in State and Federal penal laws to eliminate the sex of the offender and the victim as an element of the crime will bring the references in 29 U.S.C. §§504 and 524 in line with the equality principle.

Existence of a Women's Bureau in the U.S. Department of Labor would be unnecessary if equal employment opportunity, free from gender-based discrimination, were a reality. The Women's Bureau is a necessary and proper office to serve during a transition period until the principle of equality is realized.[51] However, the statutory requirement that the Bureau's director must be a woman should be eliminated.

Title 30 -- Mineral Lands and Mining

Sex-Based References:

30 U.S.C. §§187, 843, 902, 922, 924, 931, 934

Two chapters in Title 30 have sections containing key words: 3A (Leasing and Prospecting Permits) and 22 (Coal Mine Health and Safety). Chapter 3A includes a flat hiring prohibition: coal mining leases for federally-owned lands must prohibit the employment of "any girl or woman" in any mine below the surface (30 U.S.C. §187). This restriction, enacted in 1920 as part of the Mineral Leasing Act, conflicts with the equality principle and current national equal employment opportunity policy as reflected in Title VII of the Civil Rights Act of 1964. Benefit provisions in Title 30 assume that all miners are males.

Discussion

Provisions containing sex-based references appear in sections dealing with benefits for miners suffering from pneumoconiosis (black lung disease).

30 U.S.C. §843(d) authorizes performance of an autopsy after the death of a miner, subject to the "consent of his surviving widow."

30 U.S.C.A. §902(d) defines a "miner" as "any individual who is or was employed in a coal mine." However,

the same section defines a miner's "dependent" to include his "wife" or "widow"; no reference is made in the enumeration to a husband or widower. 30 U.S.C. §922(a)(5) concerns survivor benefits for a miner's "widow," child, parent(s), sister, and, under certain conditions, brother. Time limits for benefit claims by the above-enumerated persons are specified in 30 U.S.C.A. §924. The beneficiaries listed in 30 U.S.C. §931 are "surviving widows, children, parents, brothers, or sisters"; 30 U.S.C. §934 lists as persons who may qualify for the specified benefits "widow, child, parent, brother, or sister."

The legislative history of these provisions indicates that Congress intended the same benefits for spouses and relatives of female miners as those expressly provided for families of male miners. Senate Report No. 743, 92d Cong. 2d Sess. 4 (1972), accompanying the Black Lung Benefits Act of 1972, states:

> It is possible that a miner now or in the future may be a female. It is intended that in such cases such a female miner's benefits would devolve to her spouse, and that the terms "wife" and "widow" shall be construed to include "husband" and "widower."[52]

30 U.S.C. §187 mandates sex discrimination by persons leasing federally-owned coal mines. The section provides:

> Each lease [issued under the authority of this chapter] shall contain...provisions prohibiting

> the employment of any boy under the age of sixteen or the employment of any girl or women, without regard to age, in any mine below the surface....

This prohibition dates from an era when protective legislation for women was regarded by many as a progressive development leading toward more general regulation of economic and social life in the public interest.[53] By the 1970s, it had become apparent that many laws purporting to "protect" women were, in effect, safeguarding men's jobs from competition. Restrictions of the kind mandated by 30 U.S.C. §187 have been declared unlawful in the public and private sector by Title VII of the Civil Rights Act of 1964.

30 U.S.C.A. §902(a)(2) and (e) render a "divorced wife" or a "surviving divorced wife eligible for benefits if she received at least one-half her support from the miner, or substantial contributions from him pursuant to a written agreement, or if the miner was required by court order to make substantial contributions to her support."

In keeping with the trend toward sex-neutral financial provisions in marriage and divorce laws,[54] any provision covering a divorced wife must apply as well to a divorced husband. Further, the 30 U.S.C.A. §902 dependency test for a divorced spouse is inconsistent with the position taken by Congress when it eliminated such a test for social security benefit purposes.[55]

30 U.S.C. §902(e) includes within the term "widow" a miner's wife who was living with him at the time of his death or was "living apart for reasonable cause or because of his desertion." The trend away from fault-based determinations in marital breakdown situations suggests the need for revision of this definition.

30 U.S.C.A. §§922(a)(5)(1)(A),(B), and (C) provides for survivor benefits to a sister, but to a brother only if he is under 18 years old, disabled, or a student.

Recommendations

30 U.S.C. §§843(d), 902, 922, 924, 931, 934 -- replace "widow" with "surviving spouse."

30 U.S.C. §902 -- replace "wife" with "spouse."

30 U.S.C. §§922(a)(5), 924(a)(3), 931(a), 934 -- replace "brother or sister" with "sibling(s)."

30 U.S.C. §187--replace the ban on female employees.

30 U.S.C.A. §§902(a)(1),(e)--substitute "miner and spouse" for "miner and wife."

30 U.S.C. §922(a)(5)--eliminate differential eligibility requirements for brothers and sisters.

Title 31 -- Money and Finance

Sex-Based References:

31 U.S.C. §§43(b), 94, 97, 101, 125, 241, 552, 725s

Substantive differentials in Title 31 have been cured by amendments to other Titles equalizing benefit payments to members of the Armed Forces and Federal employees of both sexes. Provisions should be revised to eliminate unnecessary gender references and terminology with masculine connotations.

Discussion

31 U.S.C. §43(b) provides for "Survivorship benefits to 'widows' and dependent children of Comptrollers General." As currently worded, the section implies that all Comptrollers General will be male.

31 U.S.C. §97 provides that the General Accounting Office may disallow payments to a soldier or to his "widow" or legal heirs for pay arrears if it appears that payment has already been made to the soldier himself or to his widow or legal heir.

31 U.S.C. §§94 and 101 refer to "enlisted man."

31 U.S.C. §125 provides for payment of special deposit foreign checks to "widows" of deceased veterans.

31 U.S.C. §241(a)(3) provides for settlement of damage claims made by, inter alia, a decedent soldier's "(3) father or mother, or both, or (4) brothers or sisters, or both ...."

31 U.S.C. §552 concerns payment of public moneys for assemblages of 4-H Boys and Girls Clubs.

31 U.S.C. §725s establishes trust funds to accommodate, inter alia, "(12) Relief and rehabilitation, Longshoremen's and Harbor Worker's Compensation Act" and (14), (43), and (46), wages due and repatriation of "American seamen."

Recommendations

31 U.S.C. §43(b) -- replace "widow" with "surviving spouse."

31 U.S.C. §§94, 101 -- replace "enlisted man" with "enlisted personnel."

31 U.S.C. §§97, 125 -- replace "widow" with "surviving spouse."

31 U.S.C. §241(a)(3) -- replace "father or mother, or both" with "either parent, or both," and "brothers or sisters or both" with "siblings."

31 U.S.C. §552 -- change in the proper name "4-H Boys and Girls Clubs" should reflect consolidation of the clubs to eliminate sex segregation, e.g., "4-H Youth Clubs" might be used to describe a consolidated organization.

31 U.S.C. §725s -- replace "Longshoremen" with "Longshore Workers" or "Stevedores" and "seamen" with "sailors."

Title 32 -- National Guard

Sex-Based References:

32 U.S.C. §§101, 714

Discussion

These two sections were identified in the printout but neither involves gender-based discrimination. 32 U.S.C. §101(18), part of a definition section, defines "spouse." 32 U.S.C. §714, relating to final settlement of accounts of deceased members, lists "father and mother" among survivors qualifying for payment in the absence of other designated individuals.

Recommendations

32 U.S.C. §714--substitute "parents" for "father and mother."

Title 33 -- Navigation and Navigable Waters

Sex-Based References:

33 U.S.C. §§771, 772, 857, 857-4, 902, 905, 908, 909, 914

Title 33 contains sex differentials in employment-related benefits in the Bureau of Lighthouses and Lighthouse Service, the Coast and Geodetic Survey, and the Longshoremen's and Harbor Workers' Compensation Act. In light of 5 U.S.C.A. §7152(c), which mandates equal benefits for male and female government employees and P.L. 92--576, 86 Stat. 1251 (1972), which cures differentials in benefits due to a surviving spouse under the Longshoremen's and Harbor Workers' Compensation Act, it appears that the substantive differentials in Title 33 are no longer operative. In keeping with a consistent program to conform terminology to the equality principle, however, each section discriminatory on its face should be amended, and unnecessary gender references should be eliminated.

Discussion

Bureau of Lighthouses and Lighthouse Service

33 U.S.C. §§771 and 772 extend benefits to "widows" of Lighthouse Service personnel. Since the Lighthouse Service merged with the Coast Guard in 1939, these provisions apply

only to civilian employees of the pre-1939 Lighthouse Service. (Coast Guard personnel are covered by Title 14 benefit provisions.)

Coast and Geodetic Survey

33 U.S.C. §857 appears on the printout because it refers to the "Servicemen's Indemnity Act of 1951," an Act repealed on August 1, 1956. 33 U.S.C. §857-4(a) mentions "officers and enlisted men" of the Armed Forces; 33 U.S.C. §857-4(c) extends rights to "widows" of members of the uniformed services.

Longshoremen's and Harbor Workers' Compensation Act (Chapter 18)

Public Law 92--576, 86 Stat. 1251, passed in 1972, amended the Longshoremen's and Harbor Worker's Compensation Act to eliminate substantive sex-based differentials. However, unnecessary gender references still remain. For example, 33 U.S.C.A. §§902(3)(14), (16), 905(a), and 908(d)(1)(A), (d)(1)(C), and (d)(1)(D), contain the sex-specific terms "longshoreman," "repairman," "husband or wife," "brother or sister," and "widow or "widower."

33 U.S.C. §§909(b) and 914 still refer to "widow or dependent husband" and "remarriage of such surviving wife." These references are inconsistent with the 1972 amendment

"making surviving husbands and wives equally eligible for survivor benefits."[56]

Recommendations

33 U.S.C. §§771, 772 -- replace "widow" with "surviving spouse."

33 U.S.C. §857-4(a) -- replace "enlisted men" with "enlisted members."

33 U.S.C. §857-4(c) -- replace "widow" with "surviving spouse."

33 U.S.C.A. §§902(3)(14),(16), 905(a), 908(d)(1)(A), (C), (D) -- replace "longshoreman" with "stevedore" or "longshore worker."
replace "repairman" with "repair-worker."
replace "brother and sister" with "siblings."
replace "wife or husband" with "spouse."

33 U.S.C. §909(b) -- replace the phrase "during widowhood or dependent widowerhood" with "while the surviving spouse remains unmarried."

Chapter 18 Title -- replace "Longshoremen's and Harbor Workers' Compensation Act" with "Stevedores' and Harbor Workers' Compensation Act" or "Longshore and Harbor Workers' Compensation Act."

33 U.S.C. §§909, 914--replace "widow or dependent husband" with "surviving spouse." These two sections should be revised to comply with the 1972 amendment extending equal benefits to surviving spouses of male and female employees.

Title 36 -- Patriotic Societies and Observances

Sex-Based References:

36 U.S.C. §§15, 18, 22, 23, 24, 25, 27, 28, 31, 32, 33, 34, 36, 39, 56, 57a, 67, 67b, 67d, 671, 78d, 85, 90e, 91, 92, 93, 97, 99, 100, 102, 113, 115, 141, 142, 147, 148, 155, 166, 167, 169, 174, 177, 273, 503, 535, 633, 691, 693, 697, 706, 763, 793, 799, 859, 881, 883, 887, 895, 896, 913, 941, 943, 945, 956, 973, 1001, 1003, 1005, 1007, 1017, 1018, 1042, 1101

Discussion

Sections requiring only terminological revision contain unnecessary gender references and sex-specific words. 36 U.S.C. §15 names the "chairman" of the Senate and House Committees on the Library as heads of a commission to direct expenditures occasioned by the American Red Cross' use of a "Memorial Building to Women of World War I."

36 U.S.C. §§57a(h), 113, 633(b), 763(1), 793, 799(a)(2), and 859(a)(3), describe organizations whose purpose is to assist, *inter alia*, widows; no corresponding reference to widowers appears in these sections. Membership in the named organizations, however, is not specifically confined to men.[57]

36 U.S.C. §§67(b)(4), (b)(10), 166, 167, 177, 503(3), 913(b), refer to "men and women." 36 U.S.C. §90e extends membership in the Disabled American Veterans to "any man or

woman" eligible. 36 U.S.C. §§67 and 67d appear on the printout because they contain the proper name "Thad Males." Under 36 U.S.C. §85 the U.S. Blind Veterans of the World War may include "any ex-serviceman" eligible. 36 U.S.C. §155 includes "women" as group participants in "National Employ the Handicapped Week." 36 U.S.C. §97 establishes the Agricultural Hall of Fame and §973(B) to honor "farmers and farm women." Sex-based terms appear in 36 U.S.C. §1101, which lists names of private corporations established under Federal law.

Patriotic, historical organizations

Sections selected by the computer incorporate nine patriotic organizations with single-sex membership. Seeking to promote patriotism, historical appreciation, and schclarship, these social groups commemorate particular wars in which U.S. Armed Forces participated. 36 U.S.C. §18 refers to the Daughters of the American Revolution (D.A.R.), and 36 U.S.C. §2Ca (not on printout) establishes the D.A.R.'s male counterpart, the Sons of the American Revolution. The Ladies of the Grand Army of the Republic (36 U.S.C. §§78, 78(d)), Sons of Union Veterans (36 U.S.C. §§531, 535), and the National Woman's Relief Corps, Auxiliary to the Grand Army of the Republic (36 U.S.C. §§1001, 1003, 1005) are sex-segregated organizations which

draw their membership from spouses and descendants of Civil War veterans. The Gold Star Mothers (36 U.S.C. §§147, 148), Blue Star Mothers (36 U.S.C. §§941, 943, 945, 956), and American War Mothers (36 U.S.C. §§91, 92, 93, 97, 99, 100, 102) are comprised of women whose sons or daughters served in the Armed Forces during World War I, World War II, the Korean War, or the Vietnam War.

The United Spanish War Veterans (36 U.S.C. §56) includes "officers and enlisted men" and "women who served honorably under contract or by appointment as Army nurses, chief nurses, or superintendents of the Army Nurse Corps... between April 21, 1898 and July 4, 1902."

Organizations which confer material benefits

Six organizations, which restrict membership to one sex, furnish educational, financial, social and other assistance to their young members. These include the Boy Scouts (36 U.S.C. §§21-29), the Girl Scouts (36 U.S.C. §§31-34, 36, 39), Future Farmers of America (36 U.S.C. §273), Boys' Clubs of America (36 U.S.C. §§691, 693, 697, 706), Big Brothers of America (36 U.S.C. §§881, 883, 887, 895, 896), and the Naval Sea Cadet Corps (36 U.S.C. §§1041-1042).

The Boy Scouts and Girl Scouts, while ostensibly providing "separate but equal" benefits to both sexes, perpetuate stereotyped sex roles to the extent that they

carry out congressionally-mandated purposes. 36 U.S.C. §23 defines the purpose of the Boy Scouts as the promotion of "...the ability of boys to do things for themselves and others, to train them in scoutcraft, and to teach them patriotism, courage, self-reliance, and kindred virtues...." The purpose of the Girl Scouts, on the other hand, is "...to promote the qualities of truth, loyalty, helpfulness, friendliness, courtesy, purity, kindness, obedience, cheerfulness, thriftiness, and kindred virtues among girls, as a preparation for their responsibilities in the home and for service to the community...." (36 U.S.C. §33.)

The Future Farmers of America, the Boys' Clubs of America, Big Brothers of America, and the Naval Sea Cadet Corps currently have no counterpart organizations open to females. These clubs provide valuable training and social activity not readily obtainable elsewhere to female children and adolescents.

36 U.S.C. §67(1) provides that one out of eight elected officials of the Amvets be a woman.

36 U.S.C. §§141, 142, and 142(a) (not on printout) establish Mother's Day and Father's Day as separate holidays. 36 U.S.C. §174 authorizes display of the flag on, inter alia, Mother's Day.

36 U.S.C. §177 prescribes different behavior in saluting the flag for men and women.

Recommendations

36 U.S.C. §15 -- substitute "chairman" with "chairperson."

36 U.S.C. §§57a(h), 113, 633(b), 763(l), 793, 799(a)(2), 859(a)(2) -- replace "widows" with "surviving spouses."

36 U.S.C. §§67(b)(4), 67(b)(10), 166, 167, 177, 503(3), 913(b) -- substitute "men and women" with "persons" or individuals."

36 U.S.C. §973 -- delete "farm women."

Tradition and the absence of any substantial distribution of benefits indicate that existing single sex patriotic organizations should be tolerated. However, the members may themselves may wish to alter their organization's composition so as not to appear incongruous with present conditions of life.

Organizations that bestow material benefits on their members should consider a name change to reflect extension of membership to both sexes. 36 U.S.C. §§1101(8),(11),(13),(15),(16),(20),(24),(27),(37),(42),(43), should be revised to conform to these changes. Congress should refuse to create such sex-segregated organizations in the future.

Social clubs designed to aid and educate young people, on the other hand, provide significant training, assistance,

or access to personnel and facilities that may not be available elsewhere. These services should be provided to girls as well as boys. In some cases, it may be more appropriate to establish separate clubs under an umbrella organization. For example, this solution may be suitable for the Big Brothers of America. In other cases, the educational, leadership, and social purposes of the clubs might best be served by extending membership to both sexes in a single organization. The Boys' Clubs of America has already taken a step in this direction.[56] Where feasible, present club members might be consulted on their preferences. Review of the purposes and activities of all these clubs should be undertaken to determine whether they perpetuate sex-role stereotypes. There are many policy considerations regarding merger that need to be debated publicly before congressional revision of these Code sections is undertaken.

36 U.S.C. §67(1) is inconsistent with a fundamental corollary of the equality principle: officials should be elected on their merit, not on the basis of sex.

Differences in the authorized method of saluting the flag should be eliminated in 36 U.S.C. §177.

Title 37 -- Pay and Allowances of the Uniformed Services

Sex-Based References:

37 U.S.C. §§202, 401, 501, 551, 904, 905

Discussion

Provisions in this Title containing gender-based references include: §501(a)(3) defining "parent"; §501(a)(4) defining "brother or sister"; and §551(1)(c) referring to "mother or father."

37 U.S.C. §202(k) relates to the pay grade of a woman officer promoted pursuant to 10 U.S.C. §5767(c), a section applicable to women only. In a sex-integrated service, women would have the same opportunities as men; differentials relating to occupational specialities, promotion, and pay, as in §5767(c), would be eliminated.

37 U.S.C. §401 was identified by the printout prior to its amendment by P.L. 93-64, 87 Stat. 147(1973). Before amendment, this section provided that a person was not dependent on a female member unless the female member provided more than one-half his support. The differential treatment of spouses of male and female members for pay and allowance purposes was declared unconstitutional in Frontiero v. Richardson,[59] and the provision has been

amended to eliminate the support test for the spouse and children of female members.

37 U.S.C. §§501(a)(2)(D), (E) supply distinct definitions for children born out of wedlock to male and female members.

37 U.S.C. §551(1)(A), relating to payments to missing members, lists "wife" but not "husband" among the missing member's dependents. Apparently, Congress did not advert to the possibility that a female member might become a missing person.

37 U.S.C. §§904, 905 relate to effective date of pay and allowances for officers of the Navy and Marine Corps. Both sections distinguish between "male officers" and "female officers" based on the differential promotion provisions.[60] Changes in Title 10 to eliminate gender-based restrictions with respect to career opportunities in the military will require corresponding changes in Title 37.

Recommendations

Stylistic review should encompass deletion of gender-based words and substitution of neutral terms wherever feasible, for example, "sibling" should replace "brother or sister," "grandparent" should replace "grandfather or grandmother."

Differentials in pay and allowance provisions, now tied to differentials in career and promotion opportunities (e.g., 37 U.S.C. §§202(k), 904, 905), would not survive a comprehensive revision to assure equal opportunity in the military, free from gender-based discrimination.[61] As part of the revision, care must be taken to assure that appropriate transition provisions are made for present female members who have not had equal opportunity for certain duty assignments, training, and promotion. The continuing effects of past discrimination render it unfair and inappropriate to compare these female members with their male counterparts under a single set of promotion standards. Affirmative action is necessary to provide female members with opportunities for training now denied them. When such action is not feasible, for example, when the female member's length of service makes it impossible to turn back the clock, provision should be made to assure that past discrimination does not operate to her disadvantage.

Provisions relating to benefits for children born out of wedlock, e.g., 37 U.S.C. §§501(a)(2)(D), (E), should be reviewed to assure that no substantive differential is retained based on the birth status of the child.[62] Current sex specific definitions reflect the greater proof problem involved in establishing male parental status. However,

consolidated definition is feasible and, in line with a consistent pattern of sex-neutral references, preferable to the gender-based definitions now supplied. For example, 37 U.S.C. §501(a)(2) might read:

> (D) a child whose official birth certificate names the decedent as a parent; and
>
> (E) a child to whose support the decedent has been judicially ordered to contribute, or of whom the decedent has been judicially decreed to be the parent, or of whom the decedent has acknowledged parentage in writing under oath.

37 U.S.C. §551(1)(A) should be amended to reflect the reality that a female as well as a male member may become a missing person. Substitution of "spouse" for "wife" in this subsection is required to render the provision consistent with the Supreme Court's ruling in Frontiero and with the equal rights principle.

Title 38 -- Veterans' Benefits

Sex-Based References:

38 U.S.C. §§101, 102, 103, 106, 302, 315, 321, 322, 341, 358, 402, 410, 411, 412, 413, 414, 415, 416, 417, 503, 505, 507, 531, 532, 533, 534, 535, 536, 537, 541, 542, 543, 544, 601, 701, 712, 716, 718, 722, 753, 765, 767, 768, 770, 773, 774, 1651, 1652, 1700, 1701, 1801, 1802, 1803, 1823, 1826, 3001, 3010, 3020, 3021, 3101, 3102, 3104, 3107, 3110, 3111, 3202, 3203, 3402, 3503, 5202

Prior to 1972 veterans' benefits followed the familiar pattern: benefits accorded wives and widows were denied husbands and widowers. P.L. 92-540, 86 Stat. 1074 (1972), provided the substantive cure required by the equality principle. However, retroactive extension of benefits for spouses of female veterans was not specified by Congress. Under the equal protection principle, the equalization should be retroactive.[63]

Discussion

38 U.S.C.A. §102(b), as amended in 1972 by P.L. 92-540, 86 Stat. 1074, eliminates principle substantive differentials in Title 38 by supplying an atypical definition provision: the section stipulates that "'wife' includes the husband of any female veteran; and 'widow,' includes the widower of any female veteran." Although this

alteration accomplished the change necessary to eliminate discrimination in benefit allocations, a consistent program to conform terminology to the equality principle requires replacement of unnecessary gender references.

Sections in which sex-based words appear include:

"father, mother" - 38 U.S.C. §§102(a)(2), 315(1)(A)-(H), 322(a)(1)-(b), 718(a),(b), 5202(b)

"grandfather, grandmother" - 38 U.S..C. §§718(a),(b), 5202(b)

"brother, sister" - 38 U.S.C. §§716(b), 718(a),(b), 753, 5202(b)

"widow, widower" - 38 U.S.C. §§701(2), 716(b)-(b)(4), 722(b)(2)-(c), 38 U.S.C.A. §765(7), 38 U.S.C. §§770(a), (f)

"wife, husband" - 38 U.S.C.A. §1002(5)

"servicemen and women" - 38 U.S.C. §1651

"Widow" is defined as a widowed person and appears without reference to "widower" in:

38 U.S.C. §§101(13)-(15), 103(a),(d), 302(a),(b), 321, 322(a),(b), 341, 402(d), 410(a),(b), 411(a)-(c), 412(b),(b)(1), 414(b),(c), 413, 416(a), (b), 503(a),(c), 541, 542, 543, 544, 1700, 1701(a), 1801(a), 1826(b), 3001(b), 3010(k), (l),(m), 3021(a), 3014(b), 3107(b), 3110, 3202(g).

Similar terminology in 38 U.S.C. §417 was cured by amendment in 1971. 38 U.S.C. §§531-537 refer to "widows" of veterans of the Mexican, Civil, Indian, and Spanish-American Wars. "Wife" not coupled with "husband" appears in 38 U.S.C. §§103(c), 315(1), 358, 503(a), 505(b), 507, 1652(d), 1700,

1701(a), 1801(a), 1802(g), 3107(a), (c), 3202(f), 3203(a), (b), and (c), 3503(b). In 38 U.S.C. §§103(a) (c), 414(b), (c), the word "woman" is used to refer to the veteran's spouse. In other sections, "husband" refers to the veteran, while "wife," or "widow" refers to the nonveteran spouse as in §§411(b), (c), and 1801(a).

Sex-specific terms appear in definitional provisions of 38 U.S.C. §§101(5) and 701(4) ("widow," "widower," "father," "mother").

38 U.S.C. §§765(5)(B) and 1652(a)(3) refer to a "midshipman" attending a service academy or serving in the Reserve Officers' Training Corps.

38 U.S.C. §3020 furnishes instructions to "postmasters" respecting delivery of benefit checks.

Throughout Title 38 "serviceman" is the appellation given to a member of the Armed Forces. 38 U.S.C. §§415(g)(1)(F), 767(a), 768(b) and (c), 770(f) and (g), 773, 774, and 38 U.S.C.A. §503(a)(4) deal with "servicemen's group life insurance." 38 U.S.C. §§415(g)(1)(F), 416(e)(1), 3021(a), and 38 U.S.C.A. §503(a)(4) refer to "servicemen's indemnity," a term deleted from 38 U.S.C. §3101 in a 1972 amendment (P.L. 92-328, 86 Stat. 393 (1972). References to the Servicemen's Indemnity Act of 1951 or the Servicemen's Readjustment Act of 1944, both repealed in the 1950s, appear

in 38 U.S.C. §§416(e), 712(d), 1801(b), 1803(c), and 1823(a).

38 U.S.C. §3402(c) provides for recognition of an "enlisted man" as a claims agent.

38 U.S.C. §101(3) defines "widow"[64] as the wife of a veteran at the time of his death "who lived with him continuously from the date of the marriage to the date of his death (except where there was a separation which was due to the misconduct of, or procured by, the veteran without the fault of the wife)...." The parenthetical qualification bears reconsideration in light of the growing trend among States to adopt no-fault divorce laws.[65]

38 U.S.C. §3020 prohibits delivery of benefit checks to "widows" whom the postal employee believes to have remarried, "unless the mail is addressed to such widow in the name she has acquired by her remarriage." As written, the provision implies that women automatically acquire a new name upon remarriage, an implication inconsistent with current law and the equality principle. (A spouse's surname, whether wife's or husband's, would be acquired only by choice as demonstrated by constant usage following the marriage, except in Hawaii where a wife must take her husband's surname.)

38 U.S.C. §§101(4), 765(8), (9), and 701(3) define "child" to include an illegitimate child under specified conditions. Current sex-specific provisions reflect the greater proof problem involved in establishing male parental status. Pursuant to 38 U.S.C. §§101 and 765, an illegitimate child qualifies for servicemen's group life insurance benefits under his father's policy if the veteran acknowledges the child in a signed writing, was judicially ordered to contribute to the child's support, or, before his death, was judicially decreed to be the child's father.

38 U.S.C. §765 provides additionally for proof of paternity by certified copy of the birth record or baptismal certificate showing that the insured was the informant and named as father, or by service department or other public records showing that, with his knowledge, the insured was named as father. 38 U.S.C. §101 includes a catch-all: "[the veteran] is otherwise shown by evidence satisfactory to the Administrator to be the father of such child." 38 U.S.C. §701(3), which defines "child" for National Service Life Insurance purposes, includes an illegitimate child only if the child has been designated a beneficiary by the insured.

38 U.S.C. §106(a)(1) deems service by "any woman" in the Women's Army Auxiliary Corps before October 1, 1943, to be active service for the purpose of Title 38.

38 U.S.C. §601(4)(c) defines "Veterans' Administration facility" to include private facilities with which the administrator contracts to provide hospital care for women veterans. The legislative history of this provision indicates a congressional purpose to save money and promote administrative convenience by utilizing existing facilities rather than building new ones to accommodate women veterans.

Recommendations

38 U.S.C. §§765(5)(B), 1652(a)(3)--substitute "cadet" or "midshipperson" for "midshipman."

38 U.S.C. §3020--substitute "post office director" for "postmaster."

38 U.S.C. §1651--replace "servicemen and women" with "service member(s)."

38 U.S.C. §415(g)(1)(F), 416(e)(1), 38 U.S.C.A. §§503(a)(4), 767(a), 768(b),(c), 770(f),(g), 773, 774, 3101, 3021, 3021(a)--replace "serviceman" and "servicemen" with "service member(s)."

38 U.S.C. §3402--replace "enlisted man" with "service member."

Unnecessary gender references, wherever they appear, should be replaced by sex-neutral terms: "spouse" for "wife" or "husband," "sibling" for "brother or sister," "parent" for "mother or father," "surviving spouse" for

"widow or widower," "member" and "spouse" for "man" and "women" or "husband" and "wife," etc.

Changing the proper names of the Servicemen's Indemnity Act of 1951 and the Servicemen's Readjustment Act of 1944, both of which have been repealed and replaced by other provisions of Title 38, would be inappropriate. Historical revision should not be part of the program to amend laws currently in force.

Consideration should be given to revision of 38 U.S.C. §101(3) to reflect the trend toward no-fault divorce, perhaps by substituting "except where there was a separation followed by reconciliation" for the current parenthetical qualification. To avoid the suggestion that a woman automatically acquires her new husband's name upon remarriage, section 3020(b) might be amended to read: "...if the postal employee believes that he/she has remarried (unless the employee has reason to believe that the sender knows of the remarriage)."

Proof of parentage provisions, e.g., 38 U.S.C. §§101(4), 765(8),(9), should be examined and, to the extent feasible, made uniform and sex-neutral throughout the Code.[66] Moreover, distinctions between benefit entitlement of children born in and out of wedlock, e.g., 38 U.S.C. §701, unfairly penalize children for parental conduct over

which they have no control.[67] Birth status should not be retained as a basis for substantive differentials.

No change is recommended in 38 U.S.C. §106(a)(1), the provision rendering women who served in the Women's Army Auxiliary Corps (disbanded in 1943), eligible for veterans' benefits. Without this provision these women would not be accorded benefits since the Corps was not considered part of the regular Army.

38 U.S.C. §601(4)(c), providing for contract private hospital care for women veterans, is not necessarily discriminatory, given the constitutionally protected privacy interest involved and biologically-mandated services and equipment. However, investigation should be made to determine whether hospital facilities available to female veterans are equal in accessibility and quality to facilities administered by the Veterans' Administration for male veteran care.

Title 39 -- Postal Service

Sex-Based References:

39 U.S.C. §§3008, 3010, 3011

Discussion

The identified sections regulate distribution of unsolicited, sexually-oriented advertisements through the mails. These sections permit individuals to protect themselves and their children from unwarranted intrusion into their homes of material they find offensive.[68] Such individuals may notify the Postal Service, which shall issue a judicially-enforceable order to the mailer to cease sending the material to the complainant.

Recommendations

These provisions do not create or refer to discrimination between the sexes. Accordingly, no change is recommended.

Title 40 -- Public Buildings, Property and Works

Sex-Based References:

40 U.S.C. §§166b-4, 210, 270d

Discussion

40 U.S.C. §166b-4, "on Gratuities for survivors of deceased employees under the jurisdiction of the Architect of the Capitol," refers to the "chairman" of the Committee on House Administration and to the "widow or widower" of the employee. Other unnecessary gender-based words in this Title include "watchmen" (in 40 U.S.C. §210) and "plainclothesman" (40 U.S.C.A. §206a(a) (4) but not listed on the printout). 40 U.S.C. §210, dealing with equipment for Capitol police, limits the cost to a stipulated amount "per man."

40 U.S.C. §270d, a definitional section, states that the masculine pronoun as used in 40 U.S.C. §§270(a)-270(c) "shall include all persons whether individuals, associations, copartnerships, or corporations."

Recommendations

40 U.S.C. §166b-4 -- substitute "chairperson" for "chairman"; "surviving spouse" for "widow, widower" (twice).

40 U.S.C.A. §206(a)(4) -- substitute "plainclothesperson" for "plainclothesman" or "plainclothes officer."

40 U.S.C. §210 -- substitute "watchpersons" for "watchmen"; change "per man" to "per person."

40 U.S.C. §270d -- amend to conform to solution adopted throughout the Code for pronoun usage.

Title 41 -- Public Contracts

Sex-Based References:

41 U.S.C. §§35, 36

Discussion

41 U.S.C. §§35(d), 36, incorporate differentials based on sex and age with respect to child labor. The distinctions are substantive and inconsistent with the equality principle.[69]

41 U.S.C. §35(d) calls for stipulations by those with public contracts exceeding $10,000 that no male under 16 years of age and no female under 18 will be employed by the contractor. (41 U.S.C. §36 concerns the penalty for violation of section 35.) The differential is similar in origin to State "protective" laws setting limitations on age, working hours, weight-lifting, and other conditions of employment for women workers but not for men. Limitations of this kind operate to restrict employment opportunities for women and to protect males from female competition for jobs. The limitations violate Title VII of the Civil Rights Act of 1964.[70]

Recommendations

41 U.S.C. §35(d) should read as follows: "That no person under sixteen years of age...will be employed by the contractor...."

Correspondingly, 41 U.S.C. §36 should read: "Any breach or violation of...section 35...shall render the party responsible therefor liable...for liquidated damages...the sum of $10 per day for each person under sixteen years of age...."

Title 42 -- The Public Health and Welfare

Sex-Based References:

42 U.S.C. §§213, 241, 242c, 262, 263a, 289d, 289g, 289h, 295h-9, 298b-2, 402, 403, 405, 409, 410, 411, 413, 414, 415, 416, 417, 422, 423, 425, 427, 428, 602, 606, 607, 622, 625, 633, 701, 703, 705, 706, 708, 711, 712, 1108, 1307, 1410, 1477, 1571, 1572, 1573, 1575, 1581, 1587, 1590, 1652, 1701, 1761, 1773, 1922, 1986, 2000e-2, 2000e-3, 2000e-5, 2304, 2333, 2571, 2674, 2711, 2713, 2716, 2717, 2728, 3123, 3374, 3411, 3781, 4321, 4331, 4332, 4371, 4372, 4419, 4701, 4722, 4728, 4881

Discussion

Following the general pattern, high Federal officials are designated throughout the Title as "he."[71] Other unnecessarily gender-based references include:

"man" (used to mean humanity or human) - 42 U.S.C. §§241, 262, 263(a), 4321, 4331, 4332, 4371, 4372

"manpower" - 42 U.S.C. §§602(a)(19)(A), 2571[repealed], 4722, 4881[now covered by 29 U.S.C. §848]

"salesman" - 42 U.S.C. §§410(j)(3)(B),(D)

"midshipman" - 42 U.S.C. §410(m)(3)

"chairman" - 42 U.S.C. §§1108, 4372

college "fraternity and sorority chapters" - 42 U.S.C. §410(a)(2)

"serviceman" or "servicemen" - 42 U.S.C. §§213(d), 416(k), 1410(g)(2), 1477, 1571, 1573, 1581(d)(1), 1587, 1590, 3374(a)(1)

"workmen's compensation" - 42 U.S.C. §§633(f)(4), 4881

"enlisted men's club" - 42 U.S.C. §1701(a)(3)

"American boy or girl citizens" - 42 U.S.C. §1922

"son or daughter" - 42 U.S.C. §§402, 403, 409, 410, 411, 416, 423, 2304

"mother or father" - 42 U.S.C. §§402, 403, 409, 410, 411, 416, 423, 606, 1652(b), 1701(c), 2304, 3411

"grandfather or grandmother" - 42 U.S.C. §§606, 2304

"brother or sister" - 42 U.S.C. §606, 2304, 3411

"stepfather or stepmother" - 42 U.S.C. §§402(d)(4), 606

"stepbrother or stepsister" - 42 U.S.C. §606

"stepson or stepdaughter" - 42 U.S.C. §410

"wife or husband" - 42 U.S.C. §2333

"widow or widower" - 42 U.S.C. §§402, 403, 405, 409, 410, 411, 416, 422, 1307

"men and women" - 42 U.S.C. §1108

Throughout the Social Security provisions of Title 42, "woman, wife, former wife divorced, or widow" are used alone without male counterparts because of the pervasive sex discrimination now embodied in the social security system. As discussed in the section on Social Security in Part One, these changes entail eradication of substantive differentials.

Sections in which gender references are made without discriminatory effects and for appropriate purposes include: 42 U.S.C. §§295h-9, 298b-2, 2000e-2, 2000e-3, 2000e-5, 3123,

4419, 4701, 42 U.S.C.A. §4881(g) (sections prohibiting sex discrimination); 42 U.S.C. §242c (identifies sex as a factor, among others, to be included in health surveys); 42 U.S.C. §4722 (explicit provision for recruitment of females as well as other groups who have historically been disadvantaged in the labor market, for administrative posts in State and local governments); 42 U.S.C.A. §4881(g) (sex of participants in specified public service employment programs must be identified -- section designed to assure equal employment opportunity); 42 U.S.C. §4728 (State and local government employees and persons applying for such employment shall not be required to divulge information concerning their sexual attitudes or conduct). Three such provisions -- 42 U.S.C. §2571 (Federal job training shall be provided to men and women) and 42 U.S.C. §§2711 and 2713 (men or women as Job Corps enrollees) were repealed in 1973 by P.L. 93-203, 88 Stat. (1973).

Recommendations

42 U.S.C. §§241(e), 242c, 417(e)(3), 703, 1108, 3374	-- use "the Secretary," "the Surgeon General" in place of "he" [alternatively, use "he/she"].
42 U.S.C. §§241, 262, 263(a), 4321, 4331, 4371, 4372	-- replace "man" with "humanity."
42 U.S.C. §§4331, 4332	-- where appropriate, replace "man" with "human."

42 U.S.C. §§602(a)(19)(A), 4722, 4881 -- replace "manpower" with "human resources."

42 U.S.C. §§410(j)(3)(B), and (D) -- replace "salesman" with "sales personnel" or "salesperson."

42 U.S.C. §410(m)(3) -- replace "midshipman" with "midshipperson."

42 U.S.C. §§1108, 4372 -- replace "chairman" with "chairperson."

42 U.S.C. §410(a)(2) -- replace college "fraternity and sorority chapters" with college "social societies."

42 U.S.C. §§213(d), 416(k), 1410, 1477, 1571, 1572, 1573, 1575, 1581 1587, 1590, 3374 -- where appropriate, replace "serviceman" with "service member," or "service personnel"; change is inappropriate in, e.g., 42 U.S.C. §213(d), where "servicemen's" appears as part of the title of a repealed act.

42 U.S.C. §§633(f)(4), 4881 -- replace "workmen's compensation" with "workers' compensation."

42 U.S.C. §1701(a)(3) -- replace "enlisted men's clubs" with "enlisted members" [or persons'] clubs."

42 U.S.C. §1922 -- replace "American boy or girl citizens" with "young American citizens."

42 U.S.C. §§402, 403, 409, 410, 411, 416, 423, 2304 -- replace "son or daughter" with "child(ren)."

42 U.S.C. §§402, 403, 409, 410, 411, 416, 423, 606, 1652(b), 1701(c), 2304, 3411 -- replace "mother or father" with "parent(s)."

42 U.S.C. §§606, 2304 -- replace "grandfather or grandmother" with "grandparents."

42 U.S.C. §§606, 2304, 3411, -- replace "brother or sister" with "sibling(s)."

42 U.S.C. §§402(d)(4), 606 -- replace "stepfather or stepmother" with "stepparent(s)" and "stepbrother" or "stepsister" with "stepsibling(s)."

42 U.S.C. §410 -- replace "stepson or stepdaughter" with "stepchildren."

42 U.S.C. §§606, 2304 -- retain "uncle or aunt" and "nephew or niece" (since sex-neutral substitutes are not currently available).

42 U.S.C. §§402, 403, 405, 409, 410, 411, 416, 422, 1307, 1701(c), 3411 -- replace "wife or husband" with "spouse."

42 U.S.C. §2333 -- replace "a husband and wife" with "spouses" or "married couple."

42 U.S.C. §§402, 403, 405, 409, 410 411, 416, 422, 1307 -- replace "widow or widower" with "surviving spouse."

42 U.S.C. §1108 -- replace "men and women" with "persons" or "individuals."

Title 43 -- Public Lands

Sex-Based References:

43 U.S.C. §§164, 166, 167, 168, 170, 171, 190, 243a, 255, 272, 278, 279, 423c, 423h, 451a, 451c, 1131, 1602

Additional sections considered: 43 U.S.C. §§161, 162

The system of granting tracts of public land to homesteaders for development is regulated in extensive detail in this Title. Various sections are fraught with sex discrimination deriving from two assumptions: that enterers are generally male and that special rules are necessary for female enterers because of legal disabilities accompanying marriage.

Discussion

Throughout this Title, the words "entryman" and "entrywoman" as well as the sex-neutral "enterer" are used to describe homesteaders. In some provisions sex-specific terminology is tied to a substantive differential between the rights of male and female enterers; in others, the gender-based references do not signal substantive differentials.

Sex-based words should be eliminated throughout the Title, whether or not the words are linked to a substantive differential. Since the terms "entryman" and "entrywoman"

were not included in the key word list, the entire Title should be reviewed to identify all provisions with gender-based references.

Other sex-specific terms used unnecessarily in Title 43 include:

"father and mother":	43 U.S.C. §171
"husband or wife"	43 U.S.C. §§279, 423h, 1131
"widow [or] widower"	43 U.S.C. §§451a, 451c(b)
"father or mother"	43 U.S.C. §§171, 1602(b)
"ex-servicemen"	43 U.S.C. §423c

43 U.S.C. §§161, 162, 166, 167, and 168 set forth some of the basic homesteading rules. Sections 161 and 162 allow citizens or persons intending to become citizens, who have reached the age of 21 or who are heads of families, to enter upon public land. Under State statute, Federal regulation, and common law the "head of a family" customarily refers to the male partner in a marital unit or the father in a two-parent family.

43 U.S.C. §§166, 167, and 168 govern the disposition of a claim when the settler or enterer marries.

Section 166 applies to a woman who, while unmarried, has settled on public land with the intention of entering upon it but at the time of her marriage has not yet made entry or applied to do so. The section permits her to obtain a patent provided that she meets the residence

requirements and that the person she marries is not claiming a separate tract under the homestead law.

Section 167 deals with the marriage of two enterers "after each shall have fulfilled the requirements of the homestead law for one year next preceding such marriage." This section provides that the marriage shall not impair the right of either spouse to a patent, and that the husband shall elect on which of the two entries the home shall thereafter be made. Residence by the couple on that tract constitutes compliance with the residence requirements on each entry.

Section 168 allows a female citizen, who has initiated a claim to a tract and has complied with the conditions to acquire title, to receive a certificate of patent despite her marriage to an alien entitled to become a citizen.

Various alternatives are available to eliminate the sex discrimination in these sections. The selection of an alternative depends upon more precise definition of congressional intent. Congress may have intended to limit married couples to one entry per couple, unless the individuals involved had met the requirements of 43 U.S.C. §167 by each entering separately and complying with the provisions of the homestead law for at least 1 year prior to the marriage. This reading of congressional intent draws

some, albeit weak, support from 43 U.S.C. §§161 162, which limit the entry right of persons under 21 years of age to heads of families, i.e., only one enterer for each family in which no member is over 21. Stronger support may be gleaned from the fact that residence upon the land for specified periods of time is a condition of obtaining a patent.

When these statutes were passed, State laws gave the husband sole authority to determine the family's residence; failure of a wife to accompany and remain with her husband constituted desertion. Therefore, if a woman who had not previously entered or settled upon land married a man who had previously entered or subsequently did so, the woman would not have been free to establish a separate claim on public land. In satisfying the residence requirements, she would have given her husband grounds for divorce.

43 U.S.C. §166 provides further support for the one entry per couple interpretation; it terminates a female settler's rights to enter, even if she maintains residence on her land and if the man she marries claims a separate tract under the homestead law.

On the other hand, these provisions may merely reflect a congressional belief that married couples were required by State law to live together, but not an independent determination that married couples should be limited to one

entry between them. The recommendations proposed here do not limit married couples to a single entry. Except for the special exception contained in 43 U.S.C. §167, however, they require residence on each tract on which entry is sought to be made. Thus, married couples who choose to live together would be able to enter upon only one tract at a time. Alternate recommendations limiting each married couple to a single entry,[72] even if the spouses were prepared to reside separately, are noted also. A third possibility would be to extend the provisions of 43 U.S.C. §167 to couples who have not yet settled or entered for 1 year.

43 U.S.C. §§161 and 162 can be rendered sex-neutral by extending the right to enter on public lands to all otherwise eligible persons under the age of 21 who have one or more dependents or who are married.

43 U.S.C. §166 can be rendered sex-neutral by eliminating the provision requiring the woman to forfeit her right to enter on the tract on which she has settled if the man she married is claiming a separate tract of land, while extending to both sexes the provision requiring that a female settler who marries must continue to reside on any tract on which she wishes to make entry. Couples who wished to live together and who had both settled or entered upon public land for less than 1 year prior to their marriage

would thus have to choose one tract on which to fulfill the residence requirements. Couples willing to live apart could make entry on two tracts.

43 U.S.C. §164, setting forth rules for the issuance of certificates or patents, contains gender-based references in provisions applicable when the enterer is absent or dies during the claim period. The surviving spouse is always a "widow," the enterer always an "entryman." Sex-neutral terms should be substituted. Male and female pronouns should be utilized throughout this section.

43 U.S.C. §167 reflects the right of the husband under State law to choose the family's domicile. This "husband's prerogative" is clearly sex discriminatory. The couple should be able to live separately, one on each tract, or together on the tract of their choosing. The proposed change retains the benefit Congress gave such couples of satisfying the residence requirements on both tracts though residing on only one but removes the discriminatory method of choice.

43 U.S.C. §168 is based on the once prevalent legal doctine that a woman's identity merges with that of her husband's upon marriage. This merger meant that, when a female citizen married an alien, she forfeited her citizenship. Since nothing else in tne statute suggests

that marriage of an enterer to a citizen or alien non-enterer interferes with the issuance of a patent, 43 U.S.C. §168 has no current utility.

43 U.S.C. §170 concerns the rights of an enterer's wife if she is deserted. It should be extended to apply in the same way when an enterer abandons her husband.

43 U.S.C. §§243a, 255, 272, 278, and 279, permitting service personnel and their families to count service time toward homestead entry requirements, assumes that service personnel are all male; the only spouse mentioned is "widow." The same usage of "widow" appears in 43 U.S.C. §190, which gives Indians the right to enter public lands and avail themselves of the provisions of the homestead laws. The term "surviving spouse" should be substituted so that benefits now granted to widows will be granted to widowers as well.

Recommendations

43 U.S.C. §171 -- replace "father and mother" with "parents."

43 U.S.C. §279 -- change "husband or wife" to "person," "spouse" or "individual."

43 U.S.C. §423c -- change "ex-serviceman" to "ex-service member."

43 U.S.C. §§423h, 1131 -- change "husband or wife" to "spouse."

43 U.S.C. §§451a, 451c(b) -- replace "or in the case of a widow, widower heir, or devisee, from a spouse or ancestor" with "or in the case of a surviving spouse, heir, or devisee, from a spouse or ancestor."

43 U.S.C. §1602(b) -- change "father or mother" to "parent."

The following recommendations do <u>not</u> limit married couples to a single entry:

43 U.S.C. §161 -- replace "Every person who is the head of a family or who has arrived at the age of twenty-one years..." with "Every person who is married or who has one or more dependents or who has arrived at the age of twenty-one years."

43 U.S.C. §162 -- replace "and file in the proper land office an affidavit that he or she is the head of a family, or is over twenty-one years of age" with "and file in the proper land office an affidavit that he or she is married, or has one or more dependents, or is over twenty-one years of age."

43 U.S.C. §164 -- replace "widow" with "surviving spouse" and "entryman" with "enterer" throughout.

43 U.S.C. §166 -- replace "entrywoman" (in title) with "settler upon public lands"; replace "woman" with "person;" correct pronouns; delete "Provided further, that the man whom she marries is not, at the time of their marriage, claiming a separate tract of land under the homestead law."

43 U.S.C. §167 -- replace "Marriage of entryman to entrywoman" with "Marriage of two enterers" (in title); replace "The marriage of a homestead entryman to a homestead entrywoman" with "The marriage of one homestead enterer to another

homestead enterer"; replace "the husband shall elect on which of the two entries the home shall thereafter be made, and residence thereon by the husband and wife shall constitute a compliance with the residence requirements upon each entry" with "but if they choose to live together, they shall together elect on which of the two entries the home shall thereafter be made and residence thereon by both spouses shall constitute a compliance with the residence requirements upon each entry"; replace "the terms 'entryman' and 'entrywoman'" with "the term 'enterer.'"

43 U.S.C. §168 -- repeal entire section.

43 U.S.C. §170 -- change title to "Rights of Abandoned Spouse"; change "wife" to "spouse" where "wife" now appears with the adjective "deserted"; change "wife" to "deserted spouse" where "wife" now appears alone; change "husband" to to "enterer spouse" the first time it appears and to "deserting enterer spouse" the second time; conform pronouns.

43 U.S.C. §243a -- change "widow" to "surviving spouse" and "mother" (in title) to "parents."

43 U.S.C. §255 -- change "wife" to "spouse."

43 U.S.C. §272 -- change "widows" to "surviving spouses"; conform pronouns; change "seaman" to "sailor" or "crew member."

43 U.S.C. §278 -- change "widow" to "surviving spouse" in title and text of the section; "entrywoman" to "enterer."

Alternate Recommendations

If one entry per couple is the congressional approach, the following additional provisions could be inserted:

43 U.S.C. §161 -- add "except that a married person with or without dependents who has not entered or settled with the intention of entering prior to marriage may not enter upon public lands if her or his spouse is already an enterer."

43 U.S.C. §162 -- add to the required affidavit "and that if married, her or his spouse is not already an enterer."

43 U.S.C. §166 -- In lieu of the suggested deletion, add either "That the person he or she marries has not, at the time of their marriage, already entered upon or made application to enter upon a separate tract of land under the homestead law: Provided further, that if the person he or she marries has also settled upon a tract of public land, improved, established, and maintained a bona fide residence thereon, with the intention of appropriating the same for a home, subject to the homestead law, but at the time of marriage has not made entry of said land or made application to enter said land, the spouses may select either tract of land to enter in both of their names or in one of their names separately" or "That if the person he or she marries has already entered upon or made application to enter upon a separate tract under the homestead law, or has also settled upon a tract of public land, improved, established, and maintained a bona fide residence thereon, with the intention of appropriating the same for a home, subject to the homestead law, but at the time of marriage has not made entry of said land or made application to enter said land, the spouses may select either tract of public land to enter in both their names jointly or in one of their names separately."

The latter provision (section 166) raises the question of whether or not the spouses may apply time put in on one tract of land to the other, if they choose to live together on the tract on which one had previously resided for a shorter time. It is not the intention of this draft to enable them to do so. There also is the problem of the present gap in coverage between 43 U.S.C. §166, which covers couples in which one spouse has settled and the other spouse has entered or is not claiming a separate tract of land and 43 U.S.C. §167, which covers couples in which both spouses have settled or entered for 1 year prior to marriage. While the changes recommended would eliminate this gap, the alternative recommendation would recreate the problem. If this portion of Title 43 has any effect, and if the single entry per couple view is adopted, a section should be drafted covering all situations not specifically encompassed within sections 166 and 167.

Title 45 -- Railroads

Sex-Based References:

45 U.S.C. §§51, 52, 59, 228b, 228c, 228c-1, 228e, 228s-2, 228u, 228x, 228z-1, 351, 354, 362

Discussion

Liability for Injuries to Employees (45 U.S.C. §§51, 52, 59):

45 U.S.C. §§51 and 52 contain identical texts, the first applicable to carriers in interstate and foreign commerce, the second to carriers in territories or other possessions of the United States. The sections provide for employer liability for employee injury or death sustained "while he is employed."[73] In case of an employee's death, liability runs to "his or her personal representative for the benefit of the surviving widow or husband." "He" means "he or she" here as it generally does throughout the Code.[74]

45 U.S.C. §59, providing for survival of an injury claim, repeats the same formulas: "his or her personal representative"; "surviving widow or husband."

In 45 U.S.C. §§51 and 52 "he or she" should replace "he"; in 45 U.S.C. §§51, 52 and 59, "surviving spouse" should replace "surviving widow or husband."

Retirment of Railroad Employees (45 U.S.C. §§228b, 228c, 228c-1, 228e, 228s-2, 228u, 228x, 228z-1)

Sex-based differentials in railroad retirement are closely related to distinctions established in social security (Title 42) legislation. Revision of the Railroad Retirement Chapter of Title 45 should be effected in conjunction with revision of Title 42 Social Security provisions.[75]

Benefits for spouses of wage earners in social security and railroad retirement are drawn along similar lines. They are based on the traditional view of an adult world composed of male breadwinners and dependent wives. Outwardly, the differentials appear to favor women: wives receive benefits denied to husbands. For the female employee, however, an invidious discrimination exists: her labor does not secure for her family the protection afforded the family of a similarly situated male employee.

45 U.S.C. §228b(e) refers to benefits for a "wife" (but not a husband) who has in her care (individually or jointly with her husband) a child of the employee; 45 U.S.C. §288b(f) specifies a dependency test for a husband's benefit (a wife qualifies without regard to dependency); 45 U.S.C. §228b(g) refers back to the "child in care" provision of 45 U.S.C. §228b(e).

45 U.S.C. §228c(e) refers to a Social Security provision, 42 U.S.C. §402(q), which in turn relates to a sex-based distinction in 42 U.S.C. §402(b), (c): husbands must meet a dependency test to be eligible for benefits, wives need not.

45 U.S.C. §228e(b) provides an annuity to a widow but not to a widower of an insured employee where the widow has in her care a child of the employee. 45 U.S.C. §228e(1) stipulates a dependency test for widowers but not for widows. Another provision of the same section permits a widow but not a widower to qualify for benefits if she marries another railroad employee who dies within 1 year of the marriage.[76]

A dependency test for husbands but not wives was declared unconstitutional in Frontiero v. Richardson.[77] Excluding men from the "child in care" Social Security provision (42 U.S.C. §402(g)) was declared unconstitutional in Wiesenfeld v. Secretary of Health, Education and Welfare.[78] The incompatibility of the present sex-based benefit structure with Title VII is obvious.

As the Railroad Retirement Board has observed:

> In view of the philosophy inherent in the Equal Employment Opportunity Commission's [Sex Discrimination Guidelines], dealing with sex discrimination in private pension plans, critical analyses and a thorough review of differences in

> treatment of the sexes [under Railroad Retirement] are appropriate.
>
> ....
>
> In practice, some women are breadwinners, some men dependent, and either the same dependency test should apply to both sexes or there should be none. (It should be noted that many women would fail the dependency test were it applied to them.)
>
> ....
>
> When the present provisions of the Railroad Retirement Act were adopted [differentials based on sex] were common in other pension plans but EEOC Regulation ... now forbids discrimination by sex in private pension plans.[79]

Consistent with Federal decisions, the policy underlying Title VII and other Federal antidiscrimination measures and mandated by the equal rights principle, requires basic changes in 45 U.S.C. §§228b, c, and e: the dependency test for husbands and widowers benefit qualification should be dropped, and "child in care" benefits should be granted to the custodial parent without regard to sex.

Railroad Unemployment Insurance (45 U.S.C. §§351, 354, 362)

45 U.S.C. §351(k)(2) defines a "day of sickness" for disability compensation purposes to include "with respect to a female employee, birth of a child, (i) she is unable to work or (ii) working would be injurious to her health."

45 U.S.C. §354, designed to preclude duplicative payments for the same condition, refers to "unemployment, maternity, or sickness payments."

45 U.S.C. §362(f) is headed "Cooperation with other agencies administering unemployment, sickness, or maternity compensation laws." References to "maternity" benefits as distinct from "sickness" benefits were deleted from the text of 45 U.S.C. §362(f) in 1968. (P.L. 90-257, §§206(a), (b), (c), and (d).)

In effect, these sections define inability to work due to sickness to include disability occasioned by pregnancy. The Supreme Court currently regards inclusion of disability due to pregnancy in a State social insurance program as permissible although not mandated under the equal protection principle.[80]

The coverage afforded under 45 U.S.C. §351(k)(2)[81] is appropriate and desirable as a matter of social policy; such coverage should be mandated by the consitutional standard required under the equal rights amendment. Women temporarily unable to work due to childbirth or other pregnancy-related physical disability should not be treated as work force outcasts. Job security, income protection and health insurance coverage during such disability is

essential if equal opportunity in the labor market is to be a reality for women.[82]

Recommendations

45 U.S.C. §228b(e) -- replace "in case of a wife, has in her care (individually or jointly with her husband)," with "has in her or his care (individually or jointly with her or his spouse)."

45 U.S.C. §228b(f) -- strike the limitation that husband must have received at least one-half his support from his wife.

45 U.S.C. §228b(g) -- substitute "spouse" for "wife" each time it appears; replace "she no longer has in her care," with "such spouse no longer has in her or his care."

45 U.S.C. §228c(e) -- revise, together with 42 U.S.C. §§402(b), (c) and (q), to eliminate dependency test for husband's benefits.

45 U.S.C. §228e(b) -- replace "widow" with "surviving spouse," "her" with "her or his," "she" with "he or she."

45 U.S.C. §228e(1) -- eliminate dependency test for widower; provide the same treatment to widowed persons, regardless of sex, upon marriage to another railroad employee who dies within a year of the marriage.

Comprehensive revision of Chapter 9 of Title 45 should also encompass terminolcgical change. e.g., "spouse" in lieu of "husband" or "wife," "surviving spouse" in lieu of

"widow" or "widower," "sibling" in lieu of "brother" or "sister."

45 U.S.C. §288s-2 contains the proviso "had such spouse's husband or wife ceased compensated service." No substantive distinction is indicated by this definitional language. "Marital partner" or "spouse" might be substituted for "husband or wife," or the current language might be retained.

45 U.S.C. §288x defines "spouse" to include "wife or husband" of an employee who has been awarded an annuity under the Railroad Retirement Act of 1935. For definition purposes, use of "wife or husband" here appears appropriate. However, to the extent that the 1935 legislation does not award annuities to "wife" and "husband" under the same terms and conditions, a substantive differential is indicated.

45 U.S.C. §288z-1 refers to "widows' and widowers' insurance annuities." When substantive differentials in railroad retirement are eliminated, terminology should be changed to "surviving spouse insurance annuities."

45 U.S.C. §§51, 52--replace "he" with "he or she."

45 U.S.C. §§51, 52, 59--replace "surviving widow or husband" with "surviving spouse."

Title 46 -- Shipping

Sex-Based References:

46 U.S.C. §§17, 152, 153, 154, 155, 158, 160, 186, 191, 201, 239, 262, 263, 331, 561, 599, 601, 627, 656, 672, 679, 761, 864, 924, 953, 972, 1121, 1303, 1357, 1465

The language in this Title assumes that only men serve as merchant marines. Since 1974, however, women have been admitted to the academy and serve in the merchant marines. Employment policies on the high seas are subject to the principle of equal opportunity for men and women and the equal opportunity mandate of Title VII. Revision of individual sections is largely a matter of sex-neutralizing terminology and eliminating unnecessary gender references.

Discussion

Terms with masculine connotations appear throughout Title 46:

"Seaman" -- 46 U.S.C. §§201, 239, 331, 599, 601, 627, 672, 679

"Master" --46 U.S.C. §§154, 158, 160, 191, 201, 262, 263, 331, 561, 599, 601, 672(d), 679, 924, 953, 972, 1303

"husband" of the vessel --46 U.S.C. §§17, 262, 263, 924, 953, 972

"men" --46 U.S.C. §672(e)

"businessman" --46 U.S.C. §§864, 1121

"lifeboat man" --46 U.S.C. §§201, 239

"wife, husband" --46 U.S.C. §761

"seamanship" --46 U.S.C. §672

"prudent man" --46 U.S.C. §1465

"to man" the vessel --46 U.S.C. §§186, 191, 656, 1303, 1357

pronouns "she" and "her" to refer to "ship" --46 U.S.C. §§17, 191, 262, 656, 672

Substantive differentials based on sex appear in provisions dealing with passenger accommodations, survivor benefits, and apprenticeship requirements. 46 U.S.C. §152 establishes different regulations for male and female occupancy of double berths, confines male passengers without wives to the "forepart" of the vessel, and segregates unmarried females in a separate and closed compartment.

46 U.S.C. §153 requires provision of a bathroom for every 100 male passengers for their exclusive use and 1 for every 50 female passengers for the exclusive use of females and young children.

Under 46 U.S.C. §154 only mothers with infants and young children are to receive milk for their sustenance.

46 U.S.C. §155 provides for two separate compartments to be used as hospitals for men and women.

46 U.S.C. §§158 and 160 require submission to a customs officer of a passenger list specifying, inter alia, name,

sex, and martial status of each passenger, and preparation of an inspector's report stating number of deaths on board ship and age and sex of those who died during the voyage.

46 U.S.C. §599 provides for the payment of allotted wages to grandparents, parents, wife (but not husband), sister (but not brother), or children; 46 U.S.C. §601 provides for priority to payments for support of "wife" and minor children.

46 U.S.C. §627 authorizes the distribution of a sailor's effects to "his widow" or children.

46 U.S.C. §§561 and 672 deal with apprenticeship of "boys" to the sea service.

Recommendations

46 U.S.C. §§201, 239, 331, 599, 601, 627, 672, 679 -- substitute "sailor" for "seaman."

46 U.S.C. §§154, 158, 160, 191, 201, 262, 263, 331, 561, 599, 601, 672(d), 679, 924, 953, 972, 1303 -- replace "master" with a sex-neutral term, such as "commanding officer" or "captain."

46 U.S.C. §§17, 262, 263, 924, 953, 972 -- replace "husband" with a sex-neutral term, perhaps "manager."

46 U.S.C. §§201, 239, 672(e), 864, 1121, 1465 -- substitute "person" or "individual" for "man"; and substitute "workers" or another suitable sex-neutral term for "men."

46 U.S.C. §761 -- substitute "spouse" for "wife, husband."

46 U.S.C. §672 -- replace "duties of seamanship" with a sex-neutral reference, perhaps "nautical duties" or "seafaring duties."

46 U.S.C. §§186, 191, 656, 1303, 1357 -- use "to staff" or another suitable, sex-neutral term in lieu of "to man."

46 U.S.C. §§17, 191, 262, 263, 656, 672 -- change "she" and "her" to "it" and "its."

46 U.S.C. §§154 -- substitute "mothers" with "parents."

46 U.S.C. §599, 601, 627 -- change "wife" to "spouse," change "sister" to "sibling"; change "widow" to "surviving spouse."

46 U.S.C. §§561, 672 -- substitute "boy" with "youth" or "young person."

46 U.S.C. §§152 and 153 should be amended to eliminate distinctions based on sex while preserving the individual's right to privacy.

46 U.S.C. §152 might be changed to allow double occupancy by two "consenting adults" or one consenting adult and two children with parental permission. Separate and preferably identical compartments for each sex should be provided for those who desire the privacy of sex-segregated accommodations.

Requirements for separate bathroom facilities stipulated in Section 153 should be retained but equalized so that the ratio of persons to facility is not sex-determined; the presumption that young children will be exclusively in the care of women should be eliminated.

No change is needed in 46 U.S.C. §155 since equal, sex-segregated hospital compartments fall within the purview of the individual's right to privacy.

If specification of sex in the lists and reports authorized by 46 U.S.C. §§158 and 160 serves useful statistical purposes and does not foster discrimination, no change is required.

Title 47 -- Telegraphs, Telephones, and Radiotelegraphs

Sex-Based References:

48 U.S.C. §153

Discussion

47 U.S.C. §153(w)(4), defining a passenger on a ship, refers to those who "man and operate the ship," and to the "master" of the ship.

Recommendations

In 47 U.S.C. §153(w)(4), substitute "to staff and operate" for "to man and operate," or eliminate "man and" as redundant so that the phrase reads, "to operate the ship"; replace "master" with a term independent of sex connotation, perhaps "captain" or "commanding officer."

Title 48 -- Territories and Insular Possessions

Sex-Based References:

48 U.S.C. §§1413, 1415, 1418, 1461[83]

Discussion

Survivors of discoverers (48 U.S.C. §§1413, 1415, 1418)

A discoverer is defined in 48 U.S.C. §1411 as "any citizen of the United States." Although the discoverer may be male or female, sections 1413, 1415, and 1418 stipulate rights for the discoverer's widow but not those of the widower. The omission probably lacks substantive significance. Widowers are likely to be covered by one of the other enumerated relationships: heir, executor, administrator of the deceased or assigns.

Restrictions on political rights of persons engaging in specified sexual relationships (48 U.S.C. §1461)

This section restricts certain rights, including the right to vote or hold office, of bigamists, persons "cohabiting with more than one woman," and women cohabiting with a bigamist. Apart from the male/female differentials, the provision is of questionable constitutionality since it

appears to encroach impermissibly upon private relationships.[84]

Recommendations

48 U.S.C. §§1413, 1415, 1418 - substitute "surviving spouse" for "widow."

48 U.S.C. §1461 - substitute "person" or "individual" for "woman." If the section is retained, it should be narrowed to avoid conflict with constitutionally-protected privacy interests.

Title 49 -- Transportation

Sex-Based References:

49 U.S.C. §§1, 1373

Discussion

49 U.S.C. §1(7) prohibits free interstate transportation of passengers by a common carrier, but sets out numerous exceptions. Among those mentioned in the provision are "general chairmen of employees' organizations when such organizations are authorized and designated to represent employees in accord with the provisions of the Railway Labor Act," "linemen of telegraph and telephone companies," and "newsboys."

Certain exceptions to the 49 U.S.C. §1 free transportation prohibition discriminate on the basis of gender. Provision is made for "traveling secretaries of railroad Young Men's Christian Associations." In the context of race discrimination, "state action" was found where a "Y" received 20 percent of its income from the local United Fund and operated extensive programs for the general public.[85] Whether or not the "Y" itself is deemed implicated in "state (governmental) action," constitutional strictures should apply to benefits furnished the organization by Congress. At the least, the equal protection principle

should preclude benefits to a YMCA if equivalent benefits are not granted the counterpart YWCA.[86]

Reference is also made in section 1(7) to inmates of National Homes or State Homes for Disabled Volunteer Soldiers and of Soldiers' and Sailors' Homes. A U.S.C.A. note to section 1 of this Title explains that the National Home for Disabled Volunteer Soldiers was consolidated in the Veterans' Administration in 1930. No sex-linked words are used in reference to these homes, but the equality principle would be compromised if the homes themselves discriminate against female service members.[87]

49 U.S.C. §1373(b), on observance of tariffs and granting of rebates, states that nothing in the chapter shall prohibit air carriers from issuing tickets or passes for free or reduced fare transportation to "widows, widowers, and minor children" of employees who died as a result of injuries sustained while in the performance of duty in the service of the carrier.

Families of employees, agents, and officers of certain organizations related to the common carrier are entitled to free transportation. 49 U.S.C. §1(7) defines "families" to include "widows during widowhood...of persons who died while in the service of any such common carrier." The definition

and the benefit to which it relates should be extended to spouses who survive female employees, agents, or officers.

Recommendations

49 U.S.C. §1(7) - substitute "chairpersons" for "chairmen";
substitute "Line installers" for "Linemen";
substitute "newscarriers" for "newsboys";
substitute "surviving spouses until remarriage" for "widows during widowhood."
Amend to refer to traveling secretaries of railroad Young Men's or Women's Christian Associations.

Title 50 -- War and National Defense

Sex-Based References:

50 U.S.C. §1518, 50 U.S.C., and App §§9, 31, 453, 454, 456, 460, 530, 563, 1591, 1593, 1595, 1596, 1597, 1598, 2004, 2005, 2017

Discussion

50 U.S.C. §1518 contains the phrase "man and his environment."

50 U.S.C. App. §460(c) relates to delegation of the President's authority. As currently phrased, the provision indicates that the President is and always will be male.

Trading with the Enemy Act involves 50 U.S.C. App. §§9(b)(2), (3), (4), 31. 50 U.S.C. App. §§9(b)(2), (3), relate to categories of persons entitled to return of property held by the Alien Property Custodian. Both subsections concern women married to citizens of Germany or Austria-Hungary; (b)(2) applies to a woman who at the time of her marriage was a citizen of a neutral nation, (b)(3), to a woman who was a United States citizen. For purposes of determining the status of property not acquired from her spouse, the woman is treated as though her marriage occasioned no loss of citizenship. The apparent intent was to ameliorate the adverse impact on the woman of change of citizenship effected by marriage. However, it is unlikely

that any current case would turn on application of these provisions.

50 U.S.C. App. §9(b)(4) concerns property of diplomats and their families stationed in this country. The subsection uses the word "wife." The assumption that all diplomats are men may have conformed to reality for the period in question. As in the case of 50 U.S.C. App. §9(b)(2), (3), it is doubtful that this provision has any continuing application. Absent actual cases involving the provision, change appears unnecessary.

50 U.S.C. App. §31 concerns members of former ruling family. Reference is made to the ruler of any constituent kingdom of the German Empire during the period April 16, 1917, to July 2, 1921, and the wife or child of such person. The gender-specific term in this provision is consistent with historical fact. No change is recommended.

Selective Service Act of 1967 -- provisions involved, 50 U.S.C. App. §§453 (registration), 454 (persons liable for training and service), 456 (deferments and exemptions), 460(b)(3) (local draft boards):

50 U.S.C. App. §453 renders it the duty of every male citizen of the United States, and every other male person now or hereafter in the United States, who is between the ages of 18 and 26 to present himself for registration. 50

U.S.C. App. §§454, 456, refer back to the 50 U.S.C. App. §453 specification of male persons. Equal rights and responsibilities for men and women implies that women must be subject to draft registration if men are. Congressional debate on the equal rights amendment points clearly to an understanding of this effect of the amendment.[88]

50 U.S.C. App. §460(b)(3) provides "No citizen shall be denied membership on any local [draft] board or appeal board on account of sex." This guarantee of nondiscrimination is consistent with an equal rights requirement. No change is necessary.

Army Nurses Corps (50 U.S.C. §§1591, 1593, 1596-98) refer to females. The gender based references should be eliminated. As in other cases where sex segregation has existed in military service, care should be taken in revising legislation to avoid adverse impact on persons whose opportunities in the military have been retarded or limited because of their sex.

War Claims (50 U.S.C. App. §§2004, 2005, 2017) refer to "widow or husband."

Miscellaneous Provisions (50 U.S.C. App. §§530, 563)

50 U.S.C. App. §530, relating to eviction or distress during military service, is designed to protect the wife and other dependents of military personnel. It appears that the

section may have been intended to protect only persons actually dependent on the service member. However, the language covers all wives. This World War II statute may no longer have practical effect. If it is obsolete, it should be eliminated. If it is retained, "spouse" should replace "wife" to conform to the Supreme Court's ruling in Frontiero v. Richardson[89] and to the equal rights principle.

50 U.S.C. App. §563 provides for perfection of homestead rights when the homesteader is killed or incapacitated in military service. The sex-based reference to "widow" in this section should be replaced.

Recommendations

50 U.S.C. §1518 -- substitute "humans and their environment" for "man and his environment."

50 U.S.C. App. §§9(b)(4) 530, 563 -- substitute "spouse" for "wife."

50 U.S.C. App. §§453, 454, 456 -- substitute "citizen" and "person" for "male."

50 U.S.C. App. §§2004, 2005, 2017 -- substitute "surviving spouse" for "widow or husband."

50 U.S.C. App. §563 -- substitute "surviving spouse" for "widow."

FINDINGS AND RECOMMENDATIONS

I. Presidential and Congressional Responsibilities for Comprehensive Revision: Principal Direction of Needed Reform

Equalization of the treatment of women and men under Federal law is an overdue task which should command priority attention of the President and Congress. As demonstrated by the Title-by-Title review, a myriad of unwarranted differentials clutter the U.S. Code. While many are obsolete or of minor importance when viewed in isolation, the cumulative effect is reflective of a society that assigns tc women, solely on the basis of their sex, a subordinate or dependent role.

Several of the differentials noted in the preceding pages could not survive judicial scrutiny even without an equal rights amendment to the Constitution. All of them are vulnerable under the national commitment to eradicate gender-based discrimination, evidenced most dramatically by the overwhelming approval Congress gave to the equal rights amendment. The statutory revision sketched in the Title-by-

Title review should be commenced with diligence and dispatch. As America enters the closing quarter of the 20th century, joins in the celebration of International Women's Year in 1975, and the Bicentennial, Federal laws should not portray women as "the second sex," but as persons with rights, responsibilities and opportunities fully equal to those of men.

The Commission has recommended that the laboring oar in the revision process be wielded by Congress and the President along the lines proposed by former Representative Martha Griffiths.[90] Each congressional standing committee should deal with the laws falling within its subject-matter domain. The eventual product might be an omnibus bill aimed at eradicating all discriminatory or unnecessary gender-based provisions or references. Alternately, amendments might be introduced Title-by-Title. In either case, goals and timetables must be established so that revising the Code can be done in the most effective manner. A congressional effort of this dimension could serve as a model for similar efforts in the States and in other nations.

Three aspects of comprehensive revision warrant special emphasis. First, as former Representative Griffiths indicated in her proposal,[91] review should encompass the manifold regulations prescribed under the various laws.

(The very preliminary analyses offered in this report do not encompass consideration of regulations requiring overhaul.) Second, all antidiscrimination statutes should be canvassed so that sex may be added to the catalogue in instances where it is not now included. Third, Congress and the President should direct their attention to the concept that pervades the Code: that the adult world is (and should be) divided into two classes--independent men, whose primary responsibility is to win bread for a family and dependent women, whose primary responsibility is to care for children and household. This concept must be eliminated from the Code if it is to reflect the equality principle.

Underlying the recommendations made in this report is the fundamental point that allocation of responsibilities within the family is a matter properly determined solely by the individuals involved. Government should not steer individual decisions concerning household or breadwinning roles by casting the law's weight on the side of (or against) a particular method of ordering private relationships. Rather, a policy of strict neutrality should be pursued. That policy should accommodate both traditional and innovative patterns. At the same time, it should assure removal of artificial constraints so that women and men

willing to explore their full potential as human beings may create new traditions by their actions.

II. Sex-Based Terminology

The drafting scheme now reflected in the U.S. Code is appropriate to a society that accepts as inevitable the dominant position of men in political and economic spheres of life. The Commission has proposed revisions to reflect in form as well as in substance the equal status of women and men before the law.

Drafting consistency is not a hallmark of the current body of Federal law. For example, in some sections, when spouse is the intended meaning, the reference is to "husband or [and] wife"; in other sections, the economy-minded drafter simply used "spouse." Similarly, where the reference is to a person's child[ren], the statutory expression is sometimes "son(s) or [and] daughter(s)," and sometimes "child(ren)." "Man," "person" and "human being" are used interchangeably; "he" is generally used alone, but an occasional "he or she" appears.

Although the main rule, as expressed in 1 U.S.C. §1, is that "words importing the masculine gender include the feminine as well", certain anomalies appear. These generally reflect a congressional design to equalize treatment of women and men. For example, 26 U.S.C.

§7701(a)(17), relevant to tax treatment of alimony and support payments, explains that "husband" sometimes means "wife," and "wife" sometimes means "husband"; 38 U.S.C. §102(b) says that "wife" includes the husband of a female veteran, and "widow" the widower of a female veteran. A less eclectic drafting style should be one of the improvements accomplished by sex-neutralization of the language of Federal law.

Although the Commission recommends that symbolic figures, such as "Johnny Horizon," should include women as well as men, and that the "prudent man" become the "prudent person," the Commission does not suggest historical revision (references to the titles of legislation no longer in force should remain undisturbed), change in place or proper names (e.g., Twin Sisters Mountain, Minute Man National Park), or amendment of familiar, innocuous terms such as "brother-sister control group."

The main rule the Commission proposes (see Title 1 analysis) calls for sex-neutral terminology except in the rare instance where no suitable sex-neutral substitute term exists, or the reference is to a physical characteristic unique to some or all members of one sex, or the constitutional right to privacy necessitates a sex-specific reference.

III. Substantive Differentials

A. Precise functional description should replace gross gender classification in Federal social and employment benefit legislation.

Provision of payments for wives and widows, but not for similarly situated husbands and widowers, has been characteristic of Federal social and employment benefit legislation. Increasing female participation in the paid labor force has impelled reassessment of the quality of this differential. Once thought to operate benignly in women's favor, the differential perpetuates invidious discrimination against women who are gainfully employed, whether by choice, or, as is more often the case, necessity. Withholding from a woman's spouse benefits paid to a man's spouse in effect denies the woman equal compensation. A scheme built upon the breadwinning husband-dependent homemaking wife concept inevitably treats the woman's efforts or aspirations in the economic sector as less important than the man's.

Consistent with prohibitions against gender-based differentials announced in the Equal Pay Act (1963) and Title VII of the Civil Rights Act of 1964, Congress stipulated in December 1971 that all regulations granting benefits to government employees:

> shall provide the same benefits for a married female employee and her spouse and children as are provided for a married male employee and his spouse and children....

The remedy for existing inequities was to be benefit extension:

> [A]ny provision of law providing a benefit to a male Federal employee or to his spouse or family shall be deemed to provide the same benefit to a female Federal employee or to her spouse or family.

This stipulation appears in 5 U.S.C. §7152. Amendments of the same tenor during the period 1971-73 were made in, inter alia, 5 U.S.C. §§8341 (annuity for surviving spouse of Federal civil service employee), 2108 (veteran's preference for spouse), 5924 (allowance for spouse of Federal employee living in foreign area), 37 U.S.C. §401 (allowances for spouse of member of uniformed service), 38 U.S.C. §102(b) (benefits for veteran's spouse). Change of this kind reflects congressional awareness that the prior arrangement:

> [ran] counter to the facts of current-day living, whereby the woman's earnings are significant in supporting the family and maintaining its standard of living.[92]

Much of the needed revision still awaits congressional attention. Examples of provisions that similarly "run counter to the facts of current-day living" appear in the analyses of Titles 24, 30, 33, 42, 43, 45, 48, and 49.

Among these, the Title 42 Social Security and Aid to Families with Dependent Children provisions are particularly significant. (Title 45 Railroad Retirement provisions track differentials in Social Security).

Lagging far behind Federal antidiscrimination mandates, glaring sex differentials reflective of "the sociological conditions and climate of the 1930's"[93] survive in the Social Security Act: certain benefits that accrue to the spouse (or former spouse) of an insured male do not accrue to the spouse (or former spouse) of an insured female. Generally, benefits accrue to a female spouse without regard to dependency, but to a male spouse only if he received at least one-half his support from his wife; a married woman who pays social security taxes all her working life may receive benefits no larger than if she never contributed to the fund. Under the Aid to Families with Dependent Children program, only fathers may be considered the breadwinning parent in an intact family. In operation, if not in design, the program provides a financial incentive for impoverished families to split up, for fathers to leave home, and for mothers to bear responsibility for parenthood alone.

The sex stereotyping reflected in legislation patterned on the male breadwinner concept has long operated to deny women equal employment opportunity and fair remuneration for

their labor. It is a prime recommendation of this report that all legislation based on the breadwinning, husband-dependent, homemaking wife pattern be recast using precise functional description in lieu of gross gender classification. Functional description will preserve all currently existing protection for women who work full time within and for the family unit but, unlike gender classification, it will not penalize women who engage in or aspire to paid positions in the labor force.

B. **Legislation should reflect the distinction between childbearing, a function unique to women, and child rearing, a function that both men and women may be qualified to perform**

Just as current legislation focuses on the male as breadwinner, it also isolates the female as child tenderer. In diverse contexts, the label "maternal" or "mother" is used when "parental" or "parent" should be the legislature's meaning. For example, Titles 7, 22, and 42 contain provisions aimed at promoting and assisting family planning, health, and welfare. However, the references are to "maternal" health or welfare and "mothers." Those terms would be appropriately descriptive only if the programs involved were confined to care for pregnant women and lactating mothers. To the extent that programs relate to

birth control, family planning or the general health or welfare of a person responsible for child care, the references should be to "parental" health or welfare and "parents."

Similarly, a provision of Title 20 (§904) authorizes "maternity" leave. To the extent that leave is authorized for childrearing as distinguished from childbearing, fathers as well as mothers should be eligible.

Typical of the constant association of mothers and children, three provisions in Title 42 contain the phrase "children of working mothers" when the intended reference is to children with no parent in the home during working hours. Title 46 regulations concerning shipboard accommodations reflect a presumption that young children will be exclusively in the care of women.

In contrast to provisions that confuse childbearing and childrearing, the Railroad Retirement Act, 45 U.S.C. §351(k)(2), offers a model for appropriate treatment of "maternity." It defines a "day of sickness" for disability compensation purposes to include "with respect to a female employee," "a calendar day on which, because of pregnancy, miscarriage or the birth of a child, (i) she is unable to work or (ii) working would be injurious to her health."[94]

The coverage afforded under 45 U.S.C. §351(k)(2) is desirable as a matter of social policy and should be mandated by the constitutional standard applicable under the proposed equal rights amendment. Women temporarily unable to work due to childbirth or pregnancy-related physical disability should not be treated as labor force outcasts. Job security, income protection, and health insurance coverage during such physical disability is essential if equal opportunity in the job market is to become a reality for women. Legislation building upon the 45 U.S.C. §351(k)(2) formulation should be developed for application in all employment sectors.[95] Further, the increasingly common two-earner family pattern should impel development of a comprehensive program of government-supported child care.[96]

C. **Legislation concerning family relationships should be revised to eliminate obsolete provisions and to reflect current trends**

Title 43 provisions on homestead rights of married couples are premised on the assumption that a husband is authorized to determine the family's residence. This "husband's prerogative" is obsolete.[97] Retention of a fault concept in provisions referring to separation (30 U.S.C. §902(e), 38 U.S.C. §101(3)) is questionable in light of the

trend away from fault determinations in the dissolution of marriages. Abolishing such a provision is consistent with the developing concept that a spouse's or former marriage partner's alimony should be based on financial ability.

Sisters and brothers should rank in the same entitlement class for survivor benefit purposes. No reason appears for the "sister preference" reflected in 30 U.S.C. §922 and 46 U.S.C. §599. Provisions relating to benefits for children born out of wedlock (e.g., Titles 37, 38) should be reviewed to eliminate substantive differentials based on birth status.

D. **Legislation relating to criminal sexual activity requires critical review to assure sex-neutrality in the law as written and as enforced; sex segregation in sleeping and bathroom facilities may be continued but in other respects sex separation in penal institutions should be reviewed and modified.**

Current provisions dealing with statutory rape, rape, and prostitution are discriminatory on their face. With respect to prostitution, enforcement practices compound the discrimination. The proposed act decriminalizes prostitution, but not prostitution business. There is a growing national movement recommending unqualified

decriminalization as sound policy, implementing equal rights and individual privacy principles, as indicated by empirical investigation and experience in other nations.

Sex-segregated penal institutions are separate and, in a variety of ways, unequal. Preparation for return to a community in which men and women have equal rights, responsibilities, and opportunities is not fostered by the present arrangement. While the personal privacy principle permits maintenance of separate sleeping and bathroom facilities, no other facilities, e.g., work, school, cafeteria, should be maintained for one sex only.

E. **Statutory barriers to equal opportunity for education, training, and employment should be removed**

In certain areas Federal law retains outright sex-based exclusions from occupational training and employment opportunities; in others it exposes women to separate and unequal treatment. These restrictions should be an embarrassment to Congress. They stand in stark contrast to the employment discrimination prohibitions of Title VII of the Civil Rights Act of 1964, as amended, and the directions in Title IX of the Education Amendments of 1972 designed to promote equal educational opportunity for women and men.

Squarely conflicting with Title VII, 30 U.S.C. §187 includes a flat hiring prohibition: coal mining leases for federally-owned lands must prohibit the employment of females in any mine below the surface. This ban is impossible to justify under conditions prevailing in this latter part of the 20th century. Similarly without justification is the sex-age differential in 41 U.S.C. §35 setting a minimum age of 16 for boys and 18 for girls employed by public contractors. Also intolerable in an age when government proclaims that "equal opportunity is the law" are the Title 42 gender-based registration and priority rules set for the WIN program. Of the same genre, 25 U.S.C. §274 calls for training Indian boys as farmers and industrial workers and Indian girls as assistant matrons.

Military service is one of the issues that has generated more emotionally charged debate than any other regarding equal rights, responsibilities, and opportunities for men and women. Women are currently exempt from draft registration (50 U.S.C. App. §453) and are barred from combat duty by Title 10 proscriptions governing the Air Force, Marines, and Navy (10 U.S.C. §§6015, 8549) and by Army regulations. For these favors a toll is exacted. Women who wish to serve in the Armed Forces, whether for the training and educational opportunities or because they

aspire to permanent careers in the military, encounter a series of sex barriers. One of them, differential enlistment age requirements, was removed on May 24, 1974, by P.L. 93--290, 93d Cong., 2d Sess., amending 10 U.S.C. §505, but many remain. The combat duty exclusion has been invoked to justify restrictive enlistment quotas for women, and closing occupational specialties and training programs. The separate and unequal sphere carved out for women in the Armed Forces supplies the rationale for differential promotion provisions (Title 10) and corresponding differentials in pay and allowances (Title 37).

Supporters of the equal rights principle firmly reject draft or combat exemption for women, as Congress did when it refused to qualify the equal rights amendment by incorporating any military service exemption. The equal rights principle implies that women must be subject to the draft if men are, that military assignments must be made on the basis of individual capacity rather than sex, and that a woman must have the same opportunity as a man to qualify for any position to which she aspires in the uniformed services.

Up to now, women have been denied the opportunity to "work up through the necessary experiences." Thus, the need for affirmative action and for transition measures is particularly strong in the uniformed services. In the

transition to equal opportunity, care must be taken to avoid adverse impact on women now in service whose opportunities for training and chances for promotion have been curtailed under the current separate and unequal system.

Six federally-incorporated organizations furnishing educational and recreational programs for young people are described in Title 36. Only one of them, the Girl Scouts, was organized for females. The remaining five, Boy Scouts, Future Farmers of American, Boys' Clubs of America, Big Brothers of America and Naval Sea Cadet Corps, were designed for all-male membership. Prototypically, the purpose of the Boy Scouts is to promote "the ability of boys to do things for themselves and others ..., to teach them patriotism, courage, self-reliance, and kindred virtues" (36 U.S.C. §23), while the purpose of the Girl Scouts is to promote "the qualities of truth, loyalty, helpfulness, friendliness, courtesy, purity, kindness, obedience, cheerfulness, thriftiness, and kindred virtues among girls, as a preparation for their responsibilities in the home and for service to the community" (36 U.S.C. §33).

Societies established by Congress to aid and educate young people on their way to adulthood should be geared toward a world in which equal opportunity for men and women is a fundamental principle. In some cases, separate clubs

under one umbrella unit might be a suitable solution, at least for a transition period. In other cases, the educational purpose would be served best by immediately extending membership to both sexes in a single organization.

A number of single sex historical societies, for example, the Daughters of the American Revolution and the Sons of the American Revolution, have been federally incorporated. The character of these organizations, including the absence of any significant government assistance to or involvement with them, suggests that their present membership restrictions should be tolerated. However, the equal rights principle should preclude Congress from creating such sex-segregated organizations in the future.

In a variety of ways detailed above in the Title 26 analysis, provisions of the Internal Revenue Code may impact substantially and adversely upon the two-earner couple, imposing a fiscal burden when the working woman marries or the employed spouse in the home returns to the paid labor force. To eliminate or reduce the disincentive current tax law provides for two-earner family patterns, at least three legislative measures might be considered: 1) elimination of the joint return provision and rate table ("individual taxation"); 2) allowing a married couple to elect, for

Federal income tax purposes, to be treated as single persons; 3) a second earner deduction or credit. For reasons outlined in the Title 26 analysis, this report recommends the third approach.

A "Women's Bureau" operating within the Department of Labor is established by 29 U.S.C. §§11-14, 557. A unit charged with formulating policies to advance the welfare and opportunities of wage-earning women would be unnecessary and inappropriate if equal opportunity free from gender discrimination was a reality. However, the legacy of disadvantageous treatment of women in the economic sphere is likely to have a continuing adverse impact on women in or seeking to enter the labor force. The Women's Bureau is therefore a necessary and proper office for service during a transition period until the equal rights principle is realized.

NOTES TO PART TWO

1. "But when the right to vote...is denied to any of the male inhabitants of [a] State...the basis of representation therein shall be reduced in the proportion in which the number of such male citizens shall bear to the whole number of male citizens 21 years of age in such State." U.S. Const. amend. XIV, §2.

2. Three additional antidiscrimination provisions, not listed here, were identified by the printout because they include the word "sex": 5 U.S.C. §7151 (1970) (declares it U.S. policy to ensure equal employment opportunity for Federal employees without discrimination because of, inter alia, sex); 5 U.S.C. §7154 (1970) (prohibits discrimination in Federal employment because of, inter alia, sex); 5 U.S.C. §8902(f) (1970) (prohibits Federal employee health benefit plans that exclude an individual because of, inter alia, sex).

3. Extended to Federal, State, and municipal employment by the Equal Employment Opportunity Act of 1972, 42 U.S.C. §2000e et seq. (Supp. IV, 1974).

4. 5 U.S.C.A. §7152(c) (Cum. Supp. 1976).

5. H.R. Rep. No. 415, 92d Cong., 1st Sess. (1971).

6. S. Rep. 528, 92d Cong., 1st Sess. (1971).

7. A model bill introduced by former Representative Martha Griffiths would provide equal treatment for the surviving spouse, whether male or female. H.R. 1502, 93d Cong., 1st Sess. (1973) (unenacted into public law).

8. See H.R. Rep. No. 1558, 89th Cong., 2d Sess. (1966).

9. Cf. Simone de Beauvoir, The Second Sex 33 (H. Parshley transl. 1953).

10. See S. Rep. 202, 88th Cong., 1st Sess. (1963).

11. See Rosenbleet and Pariente, The Prostitution of the Criminal Law, 11 Am. Crim. L. Rev. 373 (1973).

12. Cf. 8 U.S.C. §1328 (1970) (changed from "alien women or girls" to "any alien" in 1910).

13. See, e.g., Rosenbleet and Pariente, The Prostitution of the Criminal Law, 11 Am. Crim. L. Rev. 373 (1973).

14. See, e.g., reference in 8 U.S.C. §1557 (1970) to international agreement on "white-slave traffic."

15. See generally K. Davidson, R. Ginsburg, and H. Kay, Text, Cases and Materials on Sex-Based Discrimination 117-30 (1974).

16. Act of Feb. 10, 1855, Ch. 71, §2, 10 Stat. 604.

17. F. G. Franklin, The Legislative History of Naturalization in the United States, 275 (1906).

18. Act of Mar. 2, 1907, Ch. 2534, §3, 34 Stat. 1228.

19. In re Krausman, 28 F.2d 1004 (E.D. Mich. 1928) (1903 marriage led to loss of citizenship); In re Drysdale, 20 F.2d 957, 958 (E.D. Mich. 1927); Watkins v. Morgenthau, 56 F. Supp. 529 (E.D. Pa. 1944).

20. In re Wright, 19 F. Supp. 224 (E.D. Pa. 1937) (married women could elect her husband's citizenship); In re Zogbaum, 32 F.2d 911 (D.S.D. 1929).

21. Act of Sept. 22, 1922, Ch. 411, §2, 42 Stat. 1021.

22. See Cable Act of Sept. 22, 1922, Ch. 411, §§2, 3, 7, 42 Stat. 1021.

23. Act of Mar. 3, 1931, Ch. 442, §4, 46 Stat. 1511. See 8 U.S.C. §1489 (1970).

24. H.R. Re. No. 1086, 87th Cong., 1st Sess. (1961).

25. See Immigration and Nationality Act of 1952, Pub. L. No. 414, §222, 66 Stat. 193 (1952) (application for visas).

26. Eisenstadt v. Baird, 405 U.S. 438 (1972); Roe v. Wade, 410 U.S. 113 (1973).

27. See 10 U.S.C. §§4682, 7541, 9682 (1970) (designating, e.g., Boy Scouts, but not Girl Scouts, as recipients). See also 10 U.S.C. §§4651 and 9651 (1970) (designating educational institutions having at least 100 male students enrolled in military training as recipients).

28. See Title 36 review infra on sex discrimination in youth scouting groups and other congressionally-authorized "patriotic societies."

29. See, e.g., Conway v. Dana, 456 Pa. 531, 318 A.2d 324 (1974).

30. Congressional revision of Title 11 was attempted in 1973. See H.R. 10792, 93d Cong., 1st Sess. (1973).

31. See Uniform Marriage and Divorce Act §§307, 308 in 9 U.L.A. 455 (1973).

32. Recommended terminological changes in Title 38 are suggested in this report. See Recommendations under Title 38.

33. See H.R. Rep. No. 499, 93d Cong., 1st Sess. (1973); S. Rep. No. 550, 93d Cong., 1st Sess. (1973).

34. See also Sex Discrimination in the Criminal Law: The Effect of the Equal Rights Amendment, 11 Am. Crim. L. Rev. 469 (1973); Notes, The Sexual Segregation of American Prisons, 82 Yale L.J. 1229 (1973).

35. 18 U.S.C. §2198 (1970), penalizing seduction, also contains sex-based terminology. Repeal of 18 U.S.C. §2198 is recommended because the section exhibits a view of women wholly at odds with the equal rights principle.

36. See S. 1400 (omitting the crime defined in 18 U.S.C. §2198 but retaining as an offense abuse of authority over persons in detention).

37. 18 U.S.C. §2032 imposes a 15-year prison sentence for a first offense upon whoever within the special maritime and territorial jurisdiction of the United States carnally knows any female, not his wife, under the age of 16.

18 U.S.C. §1153 provides for Native Americans who commit the crime of rape to be tried and punished under the exclusive jurisdiction of the United States. The crime of rape is defined in accordance with State law.

38. See Rosenbleet and Pariente, The Prostitution of the Criminal Law, 11 Am. Crim. L. Rev. 373 (1973).

39. See 13 Int'l Rev. of Crim. Policy 67, 69 (1958).

40. The President's Commission on Law Enforcement and Administration, The Challenge of Crime in a Free Society, 189 (1967).

41. See S. 1400 (Criminal Code Reform Act of 1973) which eliminates the substantive discrimination but unnecessarily refers to the surviving spouse as the "widow or widower."

42. H.R. Rep. 1356, 91st Cong., 2d Sess. 2 (1970); S. Rep. No. 999, 91st Cong., 2d Sess. 2 (1970).

43. See Notes, The Sexual Segregation of American Prisons, 82 Yale L.J. 1229 (1973).

44. Prisoners could be assigned to institutions based on, e.g., the nature of the offense committed, disciplinary record, danger of escape, and other security considerations. But gender should not be a relevant factor in determining institutional assignments. Cf. New York Times, June 20, 1974, p. 44 (reporting on successful experience at State (Massachusetts) and Federal (Texas) sex-integrated correction institutions).

45. See Griswold v. Connecticut, 381 U.S. 479 (1965); Eisenstadt v. Baird, 405 U.S. 438 (1972); Roe v. Wade, 410 U.S. 113 (1973).

46. See S. Rep. No. 92-689, 92d Cong., 2d Sess. 12 (1972).

47. Note, however, that it is appropriate to extend to men leave that permits them to attend the birth and assist the mother during and immediately after childbirth.

48. See Uniform Marriage and Divorce Act in 9 U.L.A. 455 (Supp. 1976).

49. 28 U.S.C. §§1862 and 1867(e) (1970) refer to Federal jury selection and prohibit discrimination on the basis of, inter alia, sex.

50. Imposing a further disability on a person once convicted of a crime, particularly when no account is taken of individual circumstances, is constitutionally questionable.

51. See Brown, Emerson, Falk, and Freedman, The Equal Rights Amendment: A Constitutional Basis for Equal Rights for Women, 80 Yale L.J. at 904-905.

52. 1972 U.S. Cong. and Adm. News at 2321.

53. See generally E. Baker, Protective Labor Legislation (1925); K. Davidson, R. Ginsburg, and H. Kay, Text, Cases and Materials on Sex-Based Discrimination at 15-17, 642-53 (1974).

54. See, e.g., Uniform Marriage and Divorce Act in 9 U.L.A. 455 (Supp., 1976).

55. See 42 U.S.C. §402(b)(1)(D)(1970), as amended 42 U.S.C. §402(b)(1)(D)(Supp. IV, 1974).

56. H. Rep. No. 1441, 92d Cong., 2d Sess. 9 (1972).

57. 36 U.S.C. §111 (1970) incorporates the Veterans of Foreign Wars as a "national association of men." However, in Stearns v. Veterans of Foreign Wars, 353 F. Supp. 473 (D.D.C. 1972), the court concluded that analysis of the charter language revealed no congressional intent to restrict membership to males. "The use of the pronoun 'he' and the words 'enlisted man' cannot reasonably be construed to be anything more than grammatical imprecision in drafting the clause." 353 F. Supp. at 475. The V.F.W.'s constitution did limit membership to males, but the court held that, absent any discriminatory language in the charter itself, congressional chartering alone does not constitute "state action" violative of equal protection guarantees. 353 F. Supp. at 476.

58. See New York Times, June 23, 1974, p. 40 (reporting that the Northwest Washington, D.C. branch of the Boys' Clubs of America has opened membership to girls in the belief that "coed" programs help alleviate awkwardness among adolescents). However, the Girls' Scouts of America voted not to merge with the Boys' Scouts because it wanted to continue to determine its own policy direction and to offer women extensive leadership training.

59. 411 U.S. 677 (1973).

60. See generally 10 U.S.C. §§5751-5773 (1970).

61. See The Equal Rights Amendment and the Military, 82 Yale L.J. 1533, 1544 (1973).

62. See Weber v. Aetna Casualty and Surety Co., 406 U.S. 164 (1972); Miller v. Laird, 349 F. Supp. 1034 (D.D.C. 1972).

63. See Frontiero v. Richardson, 411 U.S. 677 (1973) (differentials in benefit provisions for male and female service members and their families violate equal protection principle implicit in the fifth amendment).

64. Pursuant to 38 U.S.C. §102(b), "widow" means widowed person of either sex, if such person is incapable of self-maintenance and was permanently incapable of self-support due to physical or mental disability at the time of the veteran's death.

65. See, e.g., Uniform Marriage and Divorce Act in 9 U.L.A. 455 (1973), which establishes "irretrievable breakdown" of a marriage as the sole basis for divorce.

66. See Recommendations suggested for 37 U.S.C. §501(a)(2) and 10 U.S.C. §1477(b) in text.

67. Cf. Weber v. Aetna Casualty and Surety Co., 406 U.S. 164 (1972); Miller v. Laird, 349 F. Supp. 1034 (D.D.C. 1972).

68. See section 14 of P.L. 91-375, 81 Stat. 719 (1975), reproduced in the comment to 39 U.S.C.A. §3010.

69. Cf., Lamb v. Brown, 458 F.2d 18 (10th Cir. 1972); In Matter of Patricia A., 31 N.Y. 2d 83, 335 N.Y.S. 2d 33 (1972).

70. See, e.g., Rosenfeld v. Southern Pacific Co., 444 F.2d 1219 (9th Cir. 1971) (weightlifting); Rosen v. Public Service Electric and Gas Co., 477 F.2d 90 (3d Cir. 1973) (age).

71. See 42 U.S.C. §§241(e), 417(e)(3), 1108, and 3374 (1970).

72. With the exception of persons satisfying the requirements of 43 U.S.C. §167 (1970).

73. The current legislative scheme, providing negligence-based liability for railroad workers and sailors but a workers' compensation arrangement for longshore workers, appears anomalous.

74. 1 U.S.C. §1 (1970).

75. Consolidation of the two systems has been recommended as an urgent matter. See Railroad Retirement Commission Report, The Railroad Retirement System: Its Coming Crisis, H.R. Doc. No. 92-350, 92d Cong., 2d Sess. (1972) (hereafter cited as Railroad Retirement Commission Report).

76. Restricting benefits to persons married to the employee for at least a year prior to widowhood is of questionable constitutionality. See also Salfi v. Weinberger, 373 F. Supp. 961 (N.D. Calif. 1974) (42 U.S.C. §416(c)(5) and (e)(2) provisions denying benefits to widows married to the wage earner less than 9 months declared unconstitutional), rev'd, 422 U.S. 749 (1975).

77. 411 U.S. 677 (1973) (dependency test for housing allowance and medical and dental benefits for male but not female spouse of armed service member violates equal protection principle), but cf. Kahn v. Shevin, 416 U.S. 351 (1974) (gender line regarded by Supreme Court as operating solely to alleviate economic hardship encountered by women upheld).

78. 367 F. Supp. 981 (D.N.J. 1973), aff'd, 420 U.S. 636 (1975).

79. Railroad Retirement Commission Report at 377, 378.

80. Geduldig v. Aiello, 417 U.S. 484 (1974).

81. Prior to the 1968 amendment, the statute referred to a "maternity period." Under that formula, compensation was provided for 57 days prior to birth and 15 days after birth regardless of the claimant's ability to work. As amended, the section applies to the actual, not presumed, period of physical disability. Act of Feb. 15, 1968, Pub. L. 90-257, Title II, §201, 82 Stat. 23, amending 45 U.S.C. §351(k)(2) (codified at 45 U.S.C. §351(k)(2)(1970)).

82. See generally K. Davidson, R. Ginsburg, and H. Kay, Text, Cases and Materials on Sex-Based Discrimination 495-510 (1974).

83. Three additional sections were identified by the printout because they contain the word "sex": 48 U.S.C. §§736, 1405p, 1542. In §§1405p and 1542 discrimination based on sex in regard to voting is prohibited.

84. Cf. Griswold v. Connecticut, 381 U.S. 479 (1965); Eisenstadt v. Baird, 405 U.S. 439 (1972).

85. Smith v. YMCA, 462 F.2d 634 (5th Cir. 1972).

86. It may be that "railroad" Young Women's Christian Associations have not been organized. Equal employment opportunity in the transportation industry should open jobs for women in sufficient numbers to warrant counterpart organizations.

87. See comments in text regarding Title 24.

88. See, e.g., 118 Cong. Rec. S4389, S4409 (daily ed. Mar. 21, 1972); S. Rep. No. 92-689, 92d Cong., 2d Sess. 13-14, 24-26, 36-39 (1972).

89. 411 U.S. 677 (1973).

90. H. Res. 108, 93d Cong., 1st Sess. (1973).

91. Id.

92. H.R. Rep. No. 94-1469, 91st Cong., 2d Sess. (1971).

93. Report of the President's Task Force on Women's Rights and Responsibilities, A Matter of Simple Justice, 11 (1970).

94. The Supreme Court currently regards inclusion of disability due to pregnancy in a State social insurance program as permissible but not required by the equal protection principle. Geduldig v. Aiello, 417 U.S. 484 (1974).

95. See generally K. Davidson, R. Ginsburg, and H. Kay, Text, Cases and Materials on Sex-Based Discrimination 495-510 (1974).

96. *See id.* at 461-84.

97. See, e.g., Weintraub v. Weintraub, 356 N.Y.S. 2d 450 (Family Ct. 1974).

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